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HERBERT FRANKEL, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. Jacob E. Heller:

Q. Mr. Frankel, what is your business or occupation? A. Commission merchant.

Q. Will you talk a little louder, please, so that the jurymen can hear you? A. Commission merchant.

Q. Where is your place of business? A. West 3200
Washington Market.

Q. Are you associated with some firm? A. Yes.

Q. Will you tell us what that is? A. I am president of the Sol Frankel, Inc.

Q. And how long have you been associated with that firm? A. Twenty-seven years.

Q. In the West Washington Market? A. Yes.

Q. Are you connected with any association in the live poultry industry? A. Yes.

Q. What association? A. The Commission Merchants' Association and the New York Live 3201
Poultry Exchange.

Q. Do you have any office in any of those associations? A. Yes.

Q. What office do you hold? A. I am vice-president of the Poultry Exchange

Q. Will you describe the nature of your business or your firm's business? A. We receive shipments from the West on consignment and we sell it to the slaughter house trade in the City of New York.

Q. Will you tell us your particular activity in this particular business? A. Mine is executive; I solicit the shipments from my western connections and I also do the financing.

3202 Q. Have you any connection with any slaughter houses? A. No, sir.

Q. Are you acquainted with the practices, or rather, are you acquainted with the activity in the slaughter house? A. Yes.

Q. And how did you become so acquainted? A. Well, I have been in the business twenty-seven years.

Q. And that has brought about visits on your part to these establishments? A. Yes, sir; and many years ago I worked in a slaughter house.

3203 Q. For any length of time? A. For about a year and a half.

Q. And you are in constant contact with the slaughter house people and also those commonly denominated as market men? A. Yes.

Q. Now, have you made any studies of the conditions in the live poultry industries? A. Yes.

Q. And have you also made studies of the relation between the New York, Chicago and Boston and other markets? A. Yes.

3204 Q. And it is understood, when I ask these questions, that I am referring to the live poultry industry? A. Correct.

Q. And also the various classes of poultry and where they come from? A. Yes.

Q. And in making these studies do you consult any reports? A. Yes.

Q. What reports do you consult? A. Why, there is the daily report of Urner Barry, and the Daily Chicago Report, and then there is a monthly Federal Reserve report, and there is, oh, possibly a dozen commercial agency reports.

Q. And do you familiarize yourself with those reports? A. Yes.

Q. Have you also studied the relation, if any,

between the practices in the trade and the prices and volume of poultry? A. Yes.

Q. And are you also acquainted, sir, with competitive practices in the live poultry industry in New York and the Metropolitan area? A. Yes.

Q. And are you acquainted, sir, with the Live Poultry Code for the Metropolitan area, and its provisions? A. Yes.

Q. Now, will you tell us what straight killing is, sir? A. Why, straight killing is the killing of a coop of poultry exactly as it is purchased, all the birds on that particular coop. 3206

The Court: All?

The Witness: Yes, your Honor. In other words, if a butcher buys a coop of poultry he gets everything that is contained in that, or if he buys a half a coop he gets what is contained in the half.

Q. You are referring particularly to a sale made by yourself to market men? A. No, I am referring to a sale made by the market man to a butcher. We have no straight killing; we sell ours alive. 3207

The Court: No allowances for culls at all?

The Witness: Culls are removed at the car, your Honor.

Q. Will you tell us what the industry, referring to the commission men, understands by a cull? A. The industry's understanding—a cull is a bird that is poor in flesh, possibly has crooked breast, or other physical deformities, has pin feathers, I think that is about covering it.

3208 Q. Is that type of bird that you have now described fit for human consumption? A. It is, if it is healthy.

Q. How do you differentiate, if you do, between what you have described as a cull and a diseased bird, one that you say is not fit for human consumption? A. Well, the inspector kills all those that are diseased.

Q. You want us to understand then that when you receive the birds from the cars that there
3209 are no birds which you have deemed unfit for human consumption? A. Well, that is a difficult question to answer. I am healthy today and tomorrow I have a cold. A bird comes in, in a car, perfectly healthy and contracts a cold. The inspector would kill a bird of that kind.

Q. What is the understanding in the trade among the commission men with respect to the health or non-health of any birds when they receive them in their place of business? A. Why, they are killed.

Q. Now, what is the understanding or the—
3210 well, I will reframe the question. To the knowledge of commission men, when the birds are brought into their places of business, are there any birds unfit for human consumption amongst those birds received by them?

Mr. Rice: I object as hearsay, your Honor, as to what the knowledge of other commission men is.

The Court: As to his own experience, he may testify to that.

Mr. Jacob Heller: 27 years.

A. I would say that we offer no birds for sale which are not fit for human consumption.

3211

Q. What percentage—well, I will withdraw that. How many commission men engage in similar business as yours in the metropolitan area? A. Possibly 20.

Q. Of the total volume of birds received by these 20 what percentage does your firm receive? A. Oh, of course, that varies every year, but I should say over a period of years somewheres between 5 and 10 per cent.

Q. Are you acquainted, sir, with the practice known as mis—selling misbranded poultry? Do you know of such a practice, sir? A. No, I do not know what that means. I have never heard of the expression.

3212

Q. Have you ever heard, or do you know of, a practice of selling poultry unfit for human consumption? A. No.

Q. You refer now to a practice on the part of the commissionmen or on the part of the market men? A. I think both market men and commission men.

Q. Are you acquainted, sir, with the practice known as giving secret rebates? A. Secret rebates? No.

3213

Q. Are you acquainted, sir, with the requirements of inspection of birds coming into New York? A. Yes, sir.

Q. Do you know whether there is a Government inspection system in vogue in Philadelphia? A. There is not.

Q. Do cars come in directly from Philadelphia as they do to New York? A. Yes.

Q. And are there Government inspectors posted there? A. No.

Q. Are you acquainted with the practice of loading poultry with gravel and of constipating

3214 chickens so as to make them heavier? A. Oh, that is—that practice has not been anything like than for more than 10 years.

Q. Are you aware that there is no such practice in vogue today? A. I am absolutely certain.

Q. Are you acquainted, sir, with the type or character of the population which consumes live poultry in New York? A. Yes.

Q. Will you tell us? A. I would say that our poultry is consumed, the live poultry is consumed about at least 60 per cent. by the Jewish
3215 trade and the balance Italians, and Poles, and Germans, and other Slav races.

Q. Can you tell us, sir, the manner of the mode in which the poultry comes into the City of New York? A. Why, it comes in——

Q. Start from the beginning, with the farm. A. With the farm?

Q. Yes. A. Why, poultry is collected by men known as hucksters, or little country stores; and they in turn are brought into what is known as shipping stations. Now, these shipping sta-
3216 tions may belong to large concerns, like the packers or might be owned by little individual shippers. They are then loaded into what we call patent cars. These cars are so designed that they will—there are 128 steel cages, and they accommodate, according to size, somewheres between 4,000 and 5,000 head. These cars are so arranged that there is water and feed, and space there for a caretaker, who can sort of lead the same life as you would if you were camping out, he has a cook-stove and water and a cot on which to sleep. These—it takes anywhere from 3 to 10 or 12 days to bring a carload of poultry to New York; that is, Ohio points would

take 3 days, and down in Texas or Colorado it would take 10 or 12. Is that what you want?

Q. Yes; and then, of course, it arrives in New York or any one of the other known centers where poultry is received, is that correct? A. That is correct.

Q. When it arrives there——

The Court: When you speak of New York, you mean terminal in Jersey?

The Witness: Either one of the railroad terminals. 3218

Q. When it arrives at one of those terminals, will you tell us if you know what, if anything, is done with respect to this poultry by, let us say, commission men and market men or anybody else who has anything to do with it? A. Before the car can be unloaded, application must be made to the Department of Agriculture representative there for the inspection of that car, both as to health and to feed contents, and unless it meets the requirements of the Government, why, the car is rejected and must remain 3219 on the track until it does meet those requirements. Once it is rejected it may not be unloaded within 24 hours. After a car has passed inspection, we then, through our crew, unload these birds, by taking the birds from the car and placing them in coops. If you are not familiar with them, they are a coop, wooden-slatted coop, which is 6 by 3, and the coops contain anywhere from, oh, 150 to 180 pounds net.

Q. Then you say after this inspection has taken place, they are removed to the various places of business of the commission men? A. No, it is sold right at the terminal, it may be.

3220 Q. All of it? A. Well, what isn't sold is brought to West Washington Market.

Q. And sold to whom, sir? A. To the slaughter house men.

Q. And what do the slaughter house men do with it, do they themselves cart it off? A. Yes.

Q. With respect to that poultry which is not sold at the terminal and not carted off by the slaughter house men, what happens to that? A. That is taken down to our places in the market.

3221 Q. Tell us what happens to it there. A. Then offered for sale. If it cannot be sold that day, it is sold the next day.

Q. Do you know of any difference or any differentiation between the manner or type of quality of inspection prior to the time the Code went into effect and since the Code was in effect? A. No.

Q. Would you say the inspection to your knowledge was exactly the same? A. I would; perhaps some very minor changes; with that exception it is the same.

3222 Q. Those minor changes do not go to the very merits of the inspection? A. That is correct.

Q. Then you would say, sir, that you would characterize the inspection as the same prior to the Code and what pertains today? A. That is right.

Q. Do you know, sir, the manner in which the price that a commission man gets for his poultry is fixed? A. Yes.

Q. Will you describe how that process takes place? A. Well, at nine o'clock in the morning the buyers gather at the New York Central Terminal at 60th Street——

3223

Q. What do you mean by "buyers"? A. The slaughter house men; the commission merchants are there, the cars are there. This poultry is offered for sale. There is a representative there of the press, the recognized price medium as the Urner Barry quotation. In the absence of any direct sales or purchases the Urner Barry Quotation representative takes a willingness to buy and a willingness to sell, and that becomes the price at which the poultry is actually the basis on which the poultry is actually settled for.

3224

Q. Assuming that sales do actually take place, then what? A. The price is quoted.

Q. What are those prices that are quoted? You mean the high and the low? A. The high and low and various grades; there are four or five different grades, on each particular kind of poultry.

Q. And the high and low quoted by this agency, Urner Barry, that usually determines, does it not, the price that the balance of the poultry is sold for that particular day? A. Correct.

3225

Q. And this procedure or process is the only process or procedure by which these prices are fixed, is that right? A. That is correct.

Q. And the prices vary from day to day, do they not? A. Yes.

Q. Do you know, sir, whether there is any practice of shipping in car loads of culls as such, and for this purpose I will say to you that the definition of a cull is a chicken unfit for human consumption, not your definition as given here, but the definition that I give you? A. There is no such practice.

Q. Have you ever known in your entire experience of such a practice? A. No.

3226 Q. Do you know, sir, whether car loads of diseased chickens as such come into New York? A. No.

The Court: You don't know or they do not, which is it?

The Witness: They do not.

Q. Do you know, sir, what percentage of live poultry that does come into New York is known as a cull in accordance with the definition that I gave? A. I do not quite understand that.

3227

The Court: Read it.

(Last question repeated by the reporter.)

A. I should say a great deal less than possibly one-tenth of one per cent.

Q. What happens to those birds as I have defined them? A. They are killed.

Q. By whom? A. The inspectors.

Q. Would you say that the percentage of culls to the live poultry has been greater prior to the

3228 Code than it is today? A. Are you talking about my definition?

Q. My definition. A. Now what was that question?

Mr. Jacob E. Heller: Read it, please.

(Question repeated by the stenographer as follows: "Would you say that the percentage of culls to the live poultry has been greater prior to the Code than it is today?")

A. No.

Q. Would you say it is the same? A. About.

Q. Would you say that the percentage has been the same for the last ten or twenty years? A. Yes. That varies with the weather. If you have weather like this you have few sick birds; if you have a sudden change in weather they do get sick; they are just like humans.

Q. But you would say that the average, taking all these facts into consideration, is lower than one-tenth of one per cent? A. Correct.

Q. So that, to characterize this further, you say that one carload may have none, and another carload may have five or six? A. That is right. 3230

Q. But on an average it is no more than one-tenth of one per cent? A. That is correct.

Q. Do you know, sir, whether the character of the grade of poultry that has come into New York has changed within the present year or past two years? A. I think it is just the same.

Q. For how long would you say it has remained the same? A. About the last ten years.

Q. What determines the quality or grade of the poultry that comes in in any one month—I would rather put that this way: What determines the grade or the quality of poultry during any year? You do not understand my question? A. No, I will answer what I think you ask. I would say you get different grades that are shipped from different States in the United States, and perfectly good, healthy poultry, but one is large and another is small. 3231

Q. Will you describe as best you can the various grades? A. Well, I would say the fancy poultry came from the central part of the United States, Ohio,——

Q. If you can, tell us also when these various grades come in, if there is any particular time in which they come in?

3232

The Court: Let us get this straight. You said Ohio——

The Witness: Ohio, Indiana, Illinois.

The Court: All right.

The Witness: The lighter grades come from the Southern States, Tennessee, Alabama, Mississippi, Texas. You get another grade as you go up in Iowa and Nebraska; still another grade in the Dakotas and Minnesota; and then you go around in Nebraska and you get still another grade. It so happens that the Southern States ship in poultry during the months of, I should say, January to June; then that crop is cleaned up. Some States ship twelve months a year, like Missouri, Indiana, Illinois. The Northern States ship only in the Winter time, so to answer—I think that is the best answer I can give to your question.

3233

Q. You have said that various fowl come from various States; you also used the word "grade." I take it, then, if I am wrong check me, that a bird that comes from Indiana may be either a higher or lower grade than the bird which comes, let us say, from Nebraska, is that correct? A. That is correct.

3234

Q. Will you explain the difference in the grade? A. Well, I would say that the poultry that comes from the central States, all grade fancy poultry, and the weight would be uniformly, I would say, five pounds and over. Birds coming from Nebraska would have a tendency to be from four to five pounds. In the Southern States they run lighter than that, three and a half to five, but with very few fives.

3235

Q. Using the term top grade and low grade as it is done in your industry? A. No, we have fancy, heavy, western, average western, average and light.

Q. Then the light bird would be the low grade? A. That is correct.

Q. And the fancy bird would be the top grade? A. That is correct?

Q. Now is it true, sir, in any one month of the year birds that may have been designated in some other month as top grade may become low grade? A. Correct.

3236

Q. And you are definite, sir, that the character, and grade of poultry, of bird, spread over a period of any one year has been uniform over the last 10 years? A. Yes.

Q. Now will you please compare, sir, the metropolitan area, with the Chicago and Philadelphia and Boston and some of the other centers, known to you with respect to the grade of poultry received? A. Well, with the exception of the metropolitan district those are very small markets. Where we consume an average of 175 to 200 cars weekly, the Chicago, the next largest market, would consume over 30 cars a week or even less than that, and Boston probably not more than 10 and Philadelphia maybe a dozen and Newark a dozen, so when you say the grades I don't quite get it.

3237

Q. Well, if I may put it this way—— A. I would say we get as fine a poultry for the top grades in the City of New York as any other city does. Likewise, the Southern poultry, which is a lower grade, is also shipped to the other markets and is also just as desirable with a differential in price.

3238 Q. Now in what proportion does the total amount of the various grades that come into New York would you say the percentage of the low grade—to the top grade—is higher in New York than would pertain in Chicago? A. No, the Chicago market would be identical.

Q. Do you know, sir, whether there has been a greater demand for the low grade poultry in New York in the last few years? A. No, no greater than the fancy, in fact I would say that fancy poultry is always in demand.

3239 Q. Do you know of any practice of a number of market men coming to a commission man and saying that they want only inferior poultry? A. No.

Q. Is that practice existing or has it ever existed to your knowledge? A. Not to my knowledge.

Q. Do you know any practice, sir, of dumping all of the inferior grades of poultry in the New York market? A. No.

Q. Has there ever been to your knowledge a demand by market men, upon commission men

3240 for birds which I have defined as culls? A. No.

Q. And do you grade chickens when they come into your place of business or at the car barns? A. Well, now we get into a question of what is a grade.

Q. Well, what I mean is this; assuming that in one freight there are three or four grades, would you separate them into separate grades? A. No.

Q. Now where is the proper place for that grading? A. That is an industrial question which I do not care to answer.

3241

Q. It has been testified here that the proper place is in the country where it is assembled. A. No, that would be impossible, because a very fancy bird on the way in, either from wear or tear or from a change in weather, may become a No. 2 bird or a cull. The proper place to do it would be at the railroad yards when the cars are unloaded.

Q. By the commission man? A. Yes.

Q. And that is not done, is it? A. No.

3242

Q. Now will you explain the practice or the manner in which the market men buy from you with respect to grading—— A. Well, they go up into these railroad yards and they look at our cars and some will grade fancy and some will grade western.

Q. You mean select instead of grade, don't you? A. No, we do not agree on the term grade.

Q. Well, now assume that I use the word grading as the separating of various types of chickens.

3243

The Court: You are using it as a verb and he is using it as a noun. You mean active selecting and he means by grading, taking the coop as it stands.

Q. Now that we understand what you mean, will you go ahead? A. I would say that every car grades—I would say the price is based on the grades and that is why I said there is fancy, heavy, medium and average and so forth. The customer comes up and he knows just by looking at it, as to what grade that would be, and at what price that would sell.

Q. And when you are referring to grade now do you want us to understand that all those various grades are edible? A. Yes.

3244 The Court: He takes it on the average of the car, is that right?

The Witness: It is the average of the car, yes, your Honor. It either grades top, medium or light.

Q. Now, do you know, sir, whether in proportion to the total amount of live poultry that comes in, whether recently more of the poorer grade has come in? A. No, it is just the same.

Q. Now you stated that there are various
3245 prices for the various grades. A. Yes, sir.

Q. And to what extent do they differ? A. Possibly—that varies at seasons of the year—today it would be five or six cents from the lowest to the top.

Q. Do you know whether the slaughter house people also show that difference in the price when they sell to their customers? A. I think they do.

Q. In other words when the customer of a slaughter house comes in he also buys in accordance with the grade that he is buying? A.
3246 Yes.

Q. And do you also know, sir, whether there is a difference in the price to the ultimate consumer in the butcher store? A. I think there is, but I haven't followed it that far.

Q. Now you sell poultry to the Schechter Brothers? A. Yes.

Q. How long have you been doing that? A. Quite a number of years.

Q. And are you acquainted with the grade of poultry that they buy? A. Yes.

Q. Tell us what those grades are? A. They buy all grades.

Q. And have they ever bought anything known as culls from you? A. No.

Q. Do they make it the practice to purchase only the low grade chicken? A. Oh, no.

Q. Do you know one Tottis, who is connected with the Dexter Food Company? A. Yes.

Q. How long have you known him? A. 8 or 10 or 12 years.

Q. And do you know what his connection with the industry is? A. Why, I think he is a buyer for the Dexter Poultry Company—I mean a buyer for his concern. I don't know whether he is in that corporation, that is whether he holds an office or not. 3248

Q. I mean his particular function in the industry. A. Well, he has come to me and bought poultry and I would consider him a buyer.

Q. Do you mean in the same category as the Schechters? A. Yes.

Q. He is not a commission man to your knowledge? A. Well, the Dexter Poultry Company is a commission firm, I would not say that Tottis was, he works for that concern.

Q. Now when he purchases poultry from you doesn't he buy it for his concern? A. Yes. 3249

Q. Now do you appear practically every day at the car barn when this poultry comes in? A. Either myself or my brother.

Q. How long have you been doing that? A. For some time.

Q. Now how often do you go? A. Well, in some seasons I am there almost daily.

Q. And from what period of time have you been doing this? A. 20 years.

Q. Now confine yourself to the last 7 years? A. Yes.

3250 Q. Who else did you find there when you got there—I mean what other commission men, or people in your line of business would you meet there? A. All of them.

Q. And how many times would you say you saw this fellow Tottis there. A. Not very often.

Q. He is not understood by you in the trade as one of the commission men, is he? A. No.

Q. Did you ever know him to be connected with a slaughter house? A. They slaughter poultry.

3251 Q. Recently? A. Yes, the Dexter Poultry Company, they do both.

Q. And at what times has Tottis bought at your place of business? A. Oh, on about three or four occasions.

Q. Do you know of your own knowledge whether he makes purchases at other commission men's houses? A. I don't know.

Q. Do you know, sir, whether the consumption of live poultry has fallen in New York within the last few years? A. Yes, it has decreased.

Q. Can you state why that has been the case?

3252 A. Well, there has been a natural decrease in the consumption of all food products.

Q. Do you know of your own knowledge, sir, whether the degree with respects to poultry has been uniform with the degrees in the consumption of all other food commodities? A. Well, that seems——

Mr. Rice: Just a moment. I think, if your Honor please, we ought to have some figures and let the jury determine.

Mr. Jacob Heller: That is proper for cross examination, if your Honor please.

The Court: If you show he knows about it.

Mr. Jacob Heller: I asked him. He testifies he knows.

The Court: But he has not shown any knowledge of any other food products.

Mr. Jacob Heller: All right; I will get to that.

The Court: Undoubtedly he is an expert as to chickens because he has been dealing in them, but does he know about other food products, so he may be able to state?

Mr. Jacob Heller: I will get to that, sir. 3254

Q. You stated before that you consulted various, oh, periodicals and other literature pertaining to the poultry industry. A. That is right.

Q. Have you also done that with respect to the food industry in general? A. Yes; they report the same thing.

Q. When you say "they" who are you referring to? A. The agencies show other commodities.

Q. When you express an opinion now, is it based upon your own observation as well as what you read in these various periodicals? A. Yes. 3255

Q. Do you include the Government reports? A. Yes.

The Court: What other products do you relate to?

The Witness: Are you asking me?

The Court: What other products?

The Witness: Well, beef, dressed poultry, fish, milk.

Q. Eggs? A. Eggs.

Mr. Jacob Heller: May I have an answer to the question now, Judge?

The Court: Go ahead. That is what he says, as to those products he says he is familiar with them.

Mr. Jacob Heller: I do not know whether we got the answer.

The Court: I say, he says he has examined the——

Mr. Jacob Heller: Yes.

3257 The Court: (Continuing.) —reports as to those products.

Mr. Jacob Heller: But before I was interrupted, Judge, I asked a question and then——

The Court: I know, but you had better ask it over because there is too much between it.

Q. Do you know, sir, whether the relative decline in the poultry industry has been uniform with that in the other food industries?

3258 The Court: That you have investigated.

A. Well, I would say that with some it was less and with some it was greater.

Q. The average decline? A. I think that the decline in poultry has been about ten per cent. a year for the last three years; in beef it has been as great as thirty per cent.; in milk it has been almost thirty per cent.; in dressed poultry I think during the last year there has been an increase, and prior to that there was a decrease, so you cannot say average.

Q. How about fruits and vegetables? A. I do not know any about it.

The Court: Has the increase in the business of dressed poultry——

Mr. Jacob Heller: Decrease you mean.

The Court: (Continuing) —been greater or less than the decrease in live poultry?

The Witness: I think the increase in dressed poultry has been larger, far larger, than the decrease in live poultry.

Q. But you say, sir, the decrease in the consumption of beef—— A. Has been greater. 3260

Q. About three times as great? A. Yes.

Q. What effect, if any, do you give to the increased consumption of dressed beef as it relates to the decrease in consumption of live poultry—I meant dressed poultry when I said dressed beef? A. Oh, in dressed poultry, it really depends on the condition of the export market. What would show up in our tabulations as to consumption in dressed poultry may mean the exporting of poultry. We do not mean that it is actually consumed in the Metropolitan district. What figures they show really 3261 depend on what the conditions of the foreign exchange and the demand—foreign demand are.

Q. What relation, if any, is there between the decrease in the consumption of live poultry in New York and the type of poultry that has been coming into New York? A. I don't think any.

Q. What effect, if any, have the various economic conditions had in your opinion upon the decrease in consumption of live poultry in New York? A. I think that is what has affected our consumption.

3262 Q. What effect, if any, has—well, I will withdraw that. Have you found that the Jewish element in New York has tended towards a disregard of the Jewish dietary laws? A. Yes.

Q. Would you say, sir, that that has had any effect upon the decrease in the consumption of live poulty? A. Yes, that is one of the contributing factors.

Q. What, in your opinion, is the effect upon the character and grade—the character, I would say, rather—of the character and quality of the
3263 poultry that comes into New York City, of the amount of poultry that comes into New York City, if any, be—what effect have these various things I am now going to describe upon these first mentioned things, to wit, straight killing—— A. I am afraid I do not understand your question.

Q. Well, I will withdraw it and I will put it differently. What effect, in your opinion, has the trade practice relating to straight killing had upon the type of poultry that comes in here, meaning New York City? A. (No answer.)

3264 Q. Would you say that if straight killing was enforced that the type of poultry, meaning grade, would be different or the same? A. I do not think it would make any difference.

Q. Would it have any effect upon the total amount of poultry that came into New York? A. No.

Q. Similarly, the enforcement of an inspection—of inspection, would that have any effect upon the total amount of poultry that came into New York? A. No.

Q. Would that have any effect upon the type of poultry that came into New York? A. No.

3265

Q. What would a requirement, or practice requiring a slaughter house man to pay sixty cents an hour instead of fifty cents an hour have upon either the type of poultry that comes in or the amount of poultry that comes in? A. None.

Q. Are you certain of these things, sir? A. Yes.

Q. Isn't it the fact that the price that the commission men set upon their poultry is usually the determining factor? A. Yes.

3266

Q. What effect, if any, have these trade practices which I have referred to before upon the price that you receive for your poultry? A. None.

Q. The price that the farmer receives for his? A. None.

Q. The price that the shipper or collector gets for his poultry? A. No effect.

Q. Have you access to the bills of lading or receipts at the New York Central? A. No.

Q. Showing the car loads that have come in and to whom they came? A. No.

3267

Q. Are those records accessible? A. If they are, they should not be.

Q. Why? A. Well, it is, in the first place, it is very personal information and it is against the Interstate Commerce Commission ruling.

Q. Are you acquainted with this practice I am now going to refer to—I withdraw that. Are you acquainted with a practice which was heretofore described in this court, and I am now going to read the testimony, which will contain this practice, and then you will answer:

"Q. Are you familiar with the inspection of poultry since the Live Poultry Code went into effect? A. Yes.

"Q. Is it different in any effect? A. I think it is more drastic.

"Q. Describe the difference. A. Previously a lot of the poultry that are considered unfit for human consumption was left largely to our discretion.

"Q. To your discretion as a commission man? A. The way it works out at the present time, previously, and we have an expression in the trade, if it is a scarce market in New York, everything is good. If there is an over-supply, nothing is good. The way it worked out re-
3269 cently, even on a top market, if we try to make the buyer take the poultry he immediately starts out threatening with an inspector and you have to take back stuff that formerly we could insist on his taking."

A. Well, a lot of that is Greek to me, and I have been in the business a long time.

Q. Do you state that no such thing has been going on? A. He talks about a lot of things I do not understand.

Q. Did you hear the language? A. I certainly did.

3270 Q. It is as intelligible to you as it is to me, is it not? A. No, it doesn't mean much to me.

Q. Do you mean that you know of no such practice? A. Yes.

Q. Are you definite in that? A. Absolutely.

Q. How does the practice differ from what you described in what I just read to you? A. I told you before how poultry was sold.

Q. I will read you some more testimony and see if you are acquainted with this particular practice:

"Q. Are you familiar with the figures on the shipment of live poultry from other States of the practice of selling culls in New York market? A. Yes.

"Q. You have made a study? A. Yes.

"Q. What is the figure? A. A group of chicken dealers. One of them will go to the market and buy for 3 cents or 7 cents a pound when the market price is 17 cents and back in his store pastes up a sign poultry 15 cents a pound. All the competitors want to buy poultry at their market to compete with him and we have to be in a position where we can buy cheap poultry so we can sell it to our customers to compete with their trade. Cars come into New 3272
York with practically culls picked up just from other cities and brought to New York to satisfy that trade which wants to mark the price down."

A. I never heard of that.

Q. Are you familiar with any such practice? A. No carloads of culls have come to this market.

Q. With respect to a person coming in and saying they only want to buy 3-cent poultry. A. I think that relates to butchers coming into slaughter houses.

Q. It referred originally, if I may paraphrase it, to a butcher originally pasting on his window 3273
the price of 3 cents a pound, or 15 cents a pound, and another butcher going to the slaughter house or the commission man and saying that he wants like poultry so as to compete with him? A. Not to a commission man.

Q. You know of no such practice? A. No.

Q. If there is such a practice would you know of it? A. Yes.

Q. I read you this testimony and see if you are acquainted with this particular practice described in this testimony:

"Q. Do you know whether it was a practice on the part of shippers prior to the Code to send

3274 the inferior and sick poultry to New York markets? A. Yes, New York was the dumping ground."

A. That wasn't the practice.

Q. Is it the practice now? A. No. You have to understand when a farmer wants to sell his poultry he sells it, he doesn't particularly care whether we want it or not.

Q. This testimony, if I may interrupt you, is with respect to culls and inferior and sick poultry. A. No.

3275 Q. Confining whatever you say to that type of poultry that I have read and as I have designated, do you know of any such practice? A. No.

Q. Is it a fact that if at Philadelphia they only need 10 cars, and if 12 happen to be there the other 2 may be sent here to New York? A. That is correct.

Q. Does that mean those 2 sent to New York are inferior? A. No, they are not.

Q. They may be the best of the 12? A. Correct.

3276 Q. Referring to the practice described here, "Q. Did it differ from other large cities of the country? A. Yes, decidedly.

"Q. Why? A. Because there was a demand created for it and no effort made to keep it out of New York. Chicago has what they call a poultry board that comes in. When it arrives at the door of the receiver he requests inspectors from the Board of Trade and they grade the poultry which is sold according to their official grading. In Cleveland, Toledo, Columbus, Pittsburgh, all the poor poultry is returned and destroyed."

Q. Do you know of any such practice? A. No.

Q. Is it a fact to your knowledge that this practice does not exist, and that as a result of that these sick chickens come into New York? A. They do not.

Q. Do you know whether there is a difference between the demand for culls in New York and that which is in Newark, assuming that there is a demand for culls? A. From your definition of culls——

3278

Q. That is right. A. There is no demand, because that poultry is killed.

The Court: So that the jury does not misunderstand you, you are now talking about culls, chickens that are unfit for human consumption?

The Witness: Correct, they are killed at the car by the Federal inspectors.

The Court: And as for them you say say there is no demand?

The Witness: Yes.

The Court: On the part of the commission merchant? 3279

The Witness: That is correct.

Q. Now, do the commission men sell, as a separate item, taken apart from all other poultry, what we have defined as a cull? A. We sell only chickens fit for human consumption.

Q. So if a slaughter house man buys only from a commission man he would have no culls? A. That is correct.

Q. Except such chickens as may become diseased on the way? A. That is right.

Q. And that cannot be helped? A. No.

3280 Q. Now what percentage is that that suddenly take sick en route from the commission man to the slaughter house?

The Court: You mean between the time they leave the cars, and the commission man, and the time that they arrive at the slaughter house?

Mr. Jacob Heller: Yes.

The Witness: I would hazard a guess and say it would be less than one-tenth of

3281 one per cent, it would be very small.

Q. Taking into consideration the time element, from the time that it gets into the hands of a slaughter house man until he sells it, would you increase or decrease that percentage? A. I think it would be still remaining about the same.

Q. You don't think there is an appreciable increase during that period of time? A. That's correct.

Q. Now do you know of the relationship between the market prices in New York City—I

3282 withdraw that question. Do you know of your own knowledge of the differential between the market prices in New York, Chicago, Philadelphia and Boston or in any of the other centers? A. Yes.

Q. What is it? A. It never remains stationary.

Q. Approximately? A. I would say Chicago to New York would be 3 cents higher in New York, and Boston would be about a cent and a half.

Q. Does that portray the railroad charges? A. The difference in charges, yes. Philadelphia probably would be a cent and a half to two cents.

3283

Q. Now will you describe the manner in which—I withdraw that question—you have described the manner in which the price is fixed by the commission man on any one day. Does a similar practice pertain in Chicago and Philadelphia and in the other centers? A. Just about the same.

Q. Each of those centers fix their own prices? A. Yes.

Q. So that a price fixed in New York City would in no way determine the price fixed for instance in Philadelphia?

3284

Mr. Rice: I object to that, your Honor. If this witness is going to compare the practice of fixing prices on the New York market with the practice of the Chicago, Philadelphia or Boston markets, then we must have the facts from which this jury can make the comparison.

The Court: That is correct. If he knows.

(To Witness): Have you been on the Chicago market?

3285

The Witness: Oh, yes, your Honor.

The Court: Does the practice differ there from New York or is it the same?

The Witness: The practice in Chicago probably in the mechanical way of arriving at it is slightly different.

The Court: Well, let us have it.

The Witness: They have a little thing that they call the Chicago Poultry Board, and they will go up there and make offers on five or ten coops. There is contained in these coops not to exceed fifty pounds, so that a price is made on a very small

3292 Q. They have no right to select any number of chickens from any one coop and say we will only take those?

Mr. Rice: I object to that as leading.

The Court: Ask him if they make any selection or do they have to take the whole coop.

The Witness: If a coop is unloaded out of a car and there are, in there, either culls as your definition goes or culls of my definition, they are removed from the coop.

3293 Q. I am referring, sir, to the grade that may be—I withdraw the question. I am referring to the difference in weight with respect to the various poultry that may be in your opinion graded. A. No.

Q. In other words, when he takes the grade, he takes it with the run of the weights as contained therein? A. Correct.

Q. Now, will you tell us again what you understand by straight killing as it applies to the market man and his customer?

3294

Mr. Rice: If your Honor please, he has defined that already.

The Court: Well, go ahead. I don't think it will do any harm.

The Witness: My understanding is that a butcher will come into a market and purchase a coop of chickens and he gets everything contained in that coop, and likewise if he purchases a half a coop he will get half of what is contained in the coop, just as it runs.

The Court (to witness): To make it plain, you mean by that that he cannot exercise any arbitrary selection?

3295

The Witness: That is correct.

The Court: Gentlemen, we will take a recess until two o'clock. Gentlemen of the jury, do not discuss this case among yourselves or allow anyone to discuss it with you and return here at two o'clock sharp.

(Recess until two P. M.)

(Met pursuant to adjournment at 2 P. M.; present as before.)

3296

Mr. Joseph Heller: If your Honor please, we have about five or six witnesses who are expert witnesses, and I assume that they will be accorded the same privilege as the Government's expert witnesses and may remain in the court room.

The Court: If they are expert witnesses, yes.

Mr. Joseph Heller: Expert and character witnesses.

The Court: And not fact witnesses?

Mr. Joseph Heller: Not fact witnesses, no.

3297

Mr. Rice: Will they qualify as experts?

Mr. Joseph Heller: Sure, that is right.

The Court: Expert witnesses and character witnesses may stay in the room. Character witnesses do not have to be kept out at any time. Any character witnesses can sit in at any time, that is, assuming they are just character witnesses, not fact witnesses.

Mr. Joseph Heller: They will give expert testimony and testimony as to their character; they are both expert witnesses and character witnesses.

3298 *Herbert Frankel—By Defts.—Direct*

The Court: Character witnesses, and those that qualify as expert witnesses, will be accorded the same privilege as the other side; they may stay in the room.

HERBERT FRANKEL resumed the stand.

Direct examination (continued) by Mr. Jacob Heller:

3299 Q. Are you certain, Mr. Frankel, that the poultry, all grades of poultry bought by the Schechters from you is of an edible quality? A. Yes.

Q. No question about that in your mind? A. No question.

Q. Have you ever testified as an expert in the poultry industry on behalf of the Government? A. Yes.

Q. On how many occasions? A. Once or twice; I really don't remember.

Q. Did the Government call you as a witness to testify on this trial? A. No.

3300 Q. Were you available? A. Yes.

Q. How long have you known the defendants, the Schechter brothers? A. About ten years.

Q. Do you know others who also know the Schechters? A. Yes.

Q. Referring to people in your trade? A. Yes.

Q. Have you had occasion to talk about the Schechters with the other people in the industry during these last ten years? A. Yes.

Q. Have you observed the Schechters, their demeanor? A. Yes.

Q. Do you know their general reputation in the community, referring to the trade, of the Schechter brothers? A. Yes.

3301

Q. For peaceableness? A. Yes.
Q. For quietness? A. Yes.
Q. For law abidingness? A. Yes.
Q. For honesty in business? A. Yes.
Q. Will you tell us what that reputation is? A. Well, we have always found them——

The Court: No, what is their reputation, good or bad?

Q. In the community? A. Good.

Mr. Jacob Heller: That is all.

3302

Cross examination by Mr. Rice:

Q. Mr. Frankel, you say you were available as a witness for the Government in this case? A. Yes.
Q. You are sure about that? A. Yes.
Q. Were you not invited to come to the Grand Jury to present testimony as to the course of interstate commerce? A. I do not believe I was.
Q. Now, think a moment. Do you remember when the Grand Jury met in this case in July, 1934? A. Yes.

3303

Q. Do you remember that you were urged to come before the Grand Jury and present your testimony as to the course of interstate commerce? A. The only thing I know is that Mr. Loeb asked me to come to the Code Authority office.
Q. What did he say to you? A. And it conflicted with——

Mr. Jacob Heller: I object to that; it is not material and not binding on the defendants, what Mr. Loeb said.

The Court: You are not bound by what Mr. Loeb said to him, no.

3304 Q. Who was Mr. Loeb? A. The attorney for the Code.

Q. Chief counsel for the Code Authority, is that right? A. Yes.

Q. And he told you that the Government wanted you as a witness before the Grand Jury, is that correct? A. No.

Q. Are you positive about that? A. Yes.

Q. Didn't he tell you, "We want to use you as a witness before the Grand Jury on the question as to the course of interstate commerce in live

3305 poultry? A. He never mentioned the Grand Jury.

Q. Don't you know that the Grand Jury waited for you? A. I do not.

Q. On one occasion? A. I do not.

Q. You do not? A. No.

Q. Now, Mr. Frankel, you have testified that there are virtually no evils in the live poultry industry? A. I wasn't aware that I had.

Q. Is that your opinion? A. That there are no evils in the business?

Q. Yes, no competitive evils. A. There are

3306 competitive evils.

Q. According to you there is no occasion for the Code? A. I did not so testify.

Q. What is your testimony now? A. As to what I think of the Code?

Q. As to whether or not there is any occasion for the Code? A. So far as the benefits are concerned, this industry would have been better off without a Code.

Q. That is your idea about the Code? A. That is my opinion.

Q. You are against the Code, are you not? A. I am.

Q. And the other commission men are against the Code, aren't they? A. I cannot speak for them.

Q. Don't you know as a matter of fact that the commission men have opposed the Code? A. I do not.

Q. And that you are one of the leaders of the commission men? A. I am one of the leaders, but I am not on the Advisory Board.

Q. And you have opposed the Code, haven't you? A. No, sir.

3308

Q. You did not want the Code adopted? A. That is not so.

Q. Didn't the commission men protest against the Code at the Washington hearing? A. I beg your pardon. I appeared in Washington for a code.

Q. You appeared yourself? A. I did, but it was not the Code which the Government gave us.

Q. Wasn't it virtually the identical Code which the Government gave you? A. No.

Q. It was not? A. No.

Q. Will you look at this proposed code and tell us, Exhibit 21, and tell us whether or not that was the proposed Code submitted by the industry to Washington? A. It was not. This is the one——

3309

Q. Look it over. Have you looked it over? A. I know this particular document. This is not the Code that I proposed in Washington.

Q. Oh, that you proposed? A. For the industry.

Q. Are you the whole industry? A. I am the leader in the industry.

Q. Oh, the entire industry? Where did you get that title? A. Very well, I am not the leader.

3310 Q. What did you mean a moment ago when you said you were the leader? A. You asked me whether I was, and I said yes. At that time I was president of the Commission Merchants' Association.

Q. There are several groups in this industry, are there not? A. I am speaking for the commission merchants only.

Q. There are commission men, about twenty in number?

3311 The Court: He said he was speaking for the commission men only.

Mr. Rice: Yes.

Q. There are about twenty commission men, is that right? A. That is correct.

Q. And you claim to be the leader of the commission men? A. Correct.

Q. And then there are about four hundred slaughter house operators? A. That is right.

Q. You are not the leader of them? A. No.

Q. And in addition there are five or six thous-
3312 and retail poultry dealers and butchers in this live poultry industry? A. Correct.

Q. Who handle live poultry? A. Right.

Q. In New York, is that right? A. Yes.

Q. You do not profess to be the leader of them? A. No.

Q. Don't you know that this is the Code that was proposed by the industry, Exhibit 20? A. This is not the Code that I, as leader of the commission merchants, appeared before a Board in Washington——

Q. A Board? A. Well, a Committee.

Q. You mean you appeared before several individuals in Washington? A. Well, it was sup-

posed to be a Code Board. I do not know what you would call it.

Q. What was the name of this so-called Code Board? A. I can tell you the names of the people who appeared there.

Q. Yes, tell us that. A. One was Mr. Termohlen, another was Mr. Slocum. I think, I am not certain, I think Mr. Potts was there.

Q. Anybody else? A. There were two other men whose names I have forgotten.

Q. Mr. Termohlen is with the Agricultural Adjustment Administration, isn't he? A. Yes. 3314

Q. And Mr. Slocum is not with the Agricultural Adjustment Administration at all, is he? A. He is with the Department of Agriculture.

Q. Yes, he is with the Bureau of Agricultural Economics? A. Right.

Q. And Mr. Potts is with the Bureau of Agricultural Economics? A. That is correct.

Q. They do not have anything to do with the administration of the Code, do they? You know that. A. No, I don't.

Q. The only individual that you talked to on that occasion that had anything at all to do with 3315 the administration of the Live Poultry Code or any other Code was Mr. Termohlen, is that right? A. No.

Q. Who else? A. There was an attorney for the Code present.

Q. What is his name? A. I don't recall.

Q. You went down and talked to these individuals? A. Correct.

Q. And you call that the Code Board, is that right? A. I said I supposed it was.

Q. And what you submitted informally to these individuals you think is the proposal of the in-

3316 dustry, is that right? A. No. I represented the commission merchants.

Q. Isn't it a fact that, Mr. Frankel, that the industry, the live poultry industry submitted this proposed Code to the official representatives of the Agricultural Adjustment Administration? Look at it. A. Some months later.

Q. Some months later? A. Right.

Q. Is that right? A. Yes.

Q. You have looked at it so you know what you are talking about? A. Yes.

3317 Q. I believe I referred to this as Exhibit 20 a moment ago. It is Exhibit 21. This Code that was proposed by the industry was really proposed by the industry, wasn't it? A. Yes.

Q. Exhibit 21? A. Correct.

Q. And the proposed Code contained a proposed provision for straight killng, didn't it? A. Yes.

Q. And a proposed provision for prohibiting the sale of uninspected poultry, did it not? A. Yes.

3318 Q. And another provision prohibiting the sale of culls? A. Yes.

Q. Culls was defined as poultry unfit for human consumption? A. Correct.

Q. Is that right? A. Yes.

Q. You stated on direct examination that you were familiar with the Code as adopted, is that right? A. Yes.

Q. You are? A. Yes.

Q. What does the Code provide with regard to straight killing? A. I think that it provides for straight killing.

Q. Well, that is not very definite. Can't you tell us a little further what the Code provides

for as to straight killing? A. No, I am not familiar with the phraseology, if that is what you mean.

Q. Didn't Mr. Heller ask you whether you were familiar with the Code provision on straight killing? A. I think he did.

Q. And didn't you say yes? A. Yes.

Q. And then didn't you go ahead and try to define straight killing as you thought it was defined by the Code? A. Yes.

Q. And you did not define it as it is defined by the Code, did you? A. I really don't know. I have not seen that Code in six months. 3320

Q. Let me read—oh, you have not seen it in six months? A. That is correct.

Q. You do not know very much about the operation of the Code? A. That applies to slaughter house men. I am interested in the few sections which apply to commission merchants.

Q. And this provision deals with slaughter house men, doesn't it? A. Correct.

Q. And most of the provisions of the Code deal with slaughter house men? A. Yes.

Q. Virtually nothing deals with commission men? A. That is right. 3321

Q. This is a slaughter house men's Code? A. That is right.

Q. You don't know anything about it? A. I do.

Q. You do not know very much about it? A. A little.

Q. You have not seen the Code in the last six months? A. That is correct.

Q. And that Code was adopted on April 13, 1934? A. I do not know the date.

3286 percentage of the poultry which arrives at the market that day. They will probably make a price for the entire Chicago market on less than three hundred pounds of poultry, over an average of weeks, even though they may sell on that particular day or week one hundred thousand pounds. That differs from the Boston market, which is based on the New York market. They have a differential of about one and a half to two cents below New York, that 3287 is below the New York quoted market. In Philadelphia it is a catch-as-catch-can market.

The Court: Is the price of the New York market reflected in Philadelphia?

The Witness: No, only in Boston, but has nothing to do with the other markets, either Philadelphia or Chicago.

Q. Now assume, sir, although you have testified contrary, that the competitive practice in New York demoralizes the market price in New York 3288 City, does that in any way affect the market price in any of the other centers to your own knowledge? A. Are you speaking now about the slaughter house man?

Q. Yes. A. No.

Q. In no way would it affect it? A. No.

The Court: You said it was reflected on the Boston market.

The Witness: I asked whether he was talking about the commission man or the slaughter house and he said the competitive prices amongst slaughter houses. That would not have an effect.

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Q. Nor would it have any effect on the interstate shippers or the farmers? A. That is correct.

Q. Now have you any opinion of what the effect of the sale of culls as I have defined it, has upon the prices received by interstate shippers? A. To my knowledge none of that is sold.

Q. So that if anybody assumed there is such a thing, that person is mistaken in your opinion? A. Yes.

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Q. Now would you say, sir, in your opinion, in the absence of any requirement on the part of a commission man to practice straight killing, that it is a fair provision with respect to the market man?

Mr. Rice: There is no question of straight killing as between the commission man and the market man involved in this case, your Honor. The Code provision provides the transaction between the market man and the retailer.

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Mr. Jacob Heller: There is no question about that, but I still want the question answered in the way that I suggested it.

Mr. Rice: I object, your Honor, on the further ground that it calls for a conclusion.

The Court: He is an opinion witness.

The Witness: I don't understand the question.

Mr. Rice: I am afraid I don't either.

Q. It is a practice, sir, is it not, that a market man must buy from a commission man, the run of the coops? A. That is correct.

Q. And you have not seen the Code since it went into effect? A. But I have been at the hearings.

Q. We will come to that. I am glad you brought that out. You say that you have not seen this Code in the last six months? A. To my recollection I have not.

Q. And you do not know what the operation of the Code has been in the last six months? A. Yes, I do.

3323 Q. You do not know what the provisions are, do you? A. I do not know what is written in that Code, no, but know how the Code Authority has been administering it.

Q. You do not know what the straight killing provision is? A. I do.

Q. Define it. A. I know what I think it is.

Q. All right, let us see what you think it is. A. I think it means that poultry should be killed as it is bought without——

Q. Exactly as it is bought? A. Yes, without permitting a buyer to select poultry from any given coop.

3324 Q. Without permitting the buyer to reject any poultry? A. That is right.

Q. Not any poultry at all? A. Not any poultry at all?

Q. Yes. A. Without any poultry at all, right.

Q. That is, he cannot reject any poultry at all under the straight killing provision of the Code? A. That is correct.

Q. I want to see if you know what you are talking about. Do you remember his Honor asking you during the direct examination whether the Code provision permitted the buyer to reject any poultry at all from the coop or half coop? A. Yes.

Q. Do you remember that? A. That is right.

Q. And you answered that no rejections were permitted? A. That is correct.

Q. You did not know what the Code provision provides, do you? A. Well, I again repeat I think I do. If not in actual phraseology, in practical working, I know.

Q. Let me read Article 2, Section 15 of the Code: "The term straight killing means the practice of requiring persons purchasing poultry for resale to accept the run of any coop—of any half coop, coop or coops purchased by slaughter house operators except for culls." Now, you did not know that provision was in there, did you, "except for culls"? A. We—— 3326

Q. That is brand new to you, isn't it? A. No.

Q. Why didn't you mention that? A. It sort of slipped my mind.

Q. That is one of the most fundamental provisions of the straight killing provision, isn't it, that the buyer is permitted to reject culls, is that right? A. Well, that also depends on what we call a cull. 3327

Q. Do you know what the Code provides as to culls? A. I think my definition covers it generally.

Q. Do you know how the Code defines culls, yes or no? A. Not its phraseology, I don't.

Q. Do you know the substance? A. I think——

Q. What the Code provides for culls? A. I think the definition I gave was the definition in substance.

Q. What is that definition? A. That it is a bird which is fit for human consumption, poor in flesh, possibly pin feathers, with crooked breasts.

3328 *Herbert Frankel—By Defts.—Cross*

Q. You think that is what the Code provides as to the definition of culls, is that right? A. That is what the practical application is.

Q. You think that is what the Code provides in substance? A. I do.

Q. I want to get your understanding straight. A. That is what I think.

Q. I want to see if you know anything about this Code. A. That is what I think.

Q. That is what you think. Well, we will read the Code provision for you, Section 16 of Article
3329 2: "The term culls means poultry which is unfit for human consumption as defined in the instructions of the Chief of the Bureau of Agricultural Economics covering the inspection of live poultry at New York." You never heard that definition before, did you? A. If you heard my testimony this morning, you would have heard——

Q. I heard every word of it. A. That there was a difference of opinion in the industry as to what we consider a cull.

3330 Q. But we are concerned with the Code definition of culls, aren't we? A. I guess we are; I do not know.

Q. That is what we are concerned with, and you didn't know what that provision was, did you? A. Yes, I did.

Q. You did? A. I know what a practical application is of the term cull.

Q. You do not know what the Bureau of Agricultural Economics provision in respect to culls, in respect to poultry unfit for human consumption, is? A. Yes, I do.

Q. You have seen that? A. Yes.

Q. You didn't know the Code made any reference to those definitions of the Bureau of Agricultural Economics, did you? A. Yes.

Q. You did? A. Yes.

Q. Why didn't you say so a moment ago? A. I do not believe I was asked the question.

Q. I asked you to define culls as it is defined by the Code. A. Whether I knew it was in there and whether I could define it are two different things.

Q. Well, I think I understand you. Mr. Frankel, you say that there is no practice of selling culls in New York, culls as defined by the Code meaning poultry unfit for human consumption. A. Not to my knowledge. 3332

Q. There is no such practice? A. Not to my knowledge.

Q. Do you know why the industry proposed a code provision prohibiting the sale of culls? A. Do I know?

Q. Yes. A. Yes, I know why.

Q. They urged the adoption of that provision because that was a flagrant practice in New York City, didn't they? 3333

Mr. Jacob Heller: Your Honor, I object to that. He may ask the witness why, but not state why.

Mr. Rice: I am cross examining. Why?

Mr. Jacob Heller: But don't state it; you may cross examine, but do not state it for the record.

Q. Isn't that right? A. My understanding is the reason it was proposed is because it was against the Health Department regulations.

Q. If there had been no practice of selling poultry unfit for human consumption on the New

3334 York market do you suppose the live poultry industry would have urged the adoption of such a provision? A. That was in our—that was in the department's feeding regulations long before we ever dreamed of a code.

Q. You know that doesn't answer my question, don't you? A. I thought it answered it.

Mr. Rice: Will you read the question?

(Question read by the reporter as follows: "If there had been no practice of
3335 selling poultry unfit for human consumption on the New York market do you suppose the live poultry industry would have urged the adoption of such a provision?") A. No, I do not think they did.

Q. You do not think they did?

The Court: It is purely speculative; that isn't an opinion as to fact, that is speculation as to what might or might not have been, and I do not think it is of any great value.

3336 Q. As a matter of fact, wasn't it a flagrant widespread practice in the New York market prior to the adoption of the Code for the market men to sell all of their poultry unfit for human consumption; wasn't it? A. No.

Q. Wasn't it their practice, or the practice of many of them, to sell anything with a head on it? A. No.

Q. Anything that didn't smell really bad? A. No.

Q. You are sure about that? A. Yes.

Q. But still the live poultry industry proposed this provision prohibiting the sale of poultry unfit for human consumption? A. Yes.

3337

Q. They made many trips down to Washington, didn't they? A. Yes.

Q. They spent $9,000 making trips down to Washington? A. I don't know what they spent.

Q. Didn't you follow that up? A. No.

Q. They sent delegate after delegate down to Washington? A. Yes.

Q. You knew that, didn't you? A. Yes, sir.

Q. They were very impatient because the Government was slow in adopting a code for the live poultry industry? A. Are you talking about commission merchants or buyers?

3338

Q. I am talking about slaughter house men? A. Yes, they sent delegates.

Q. They sent many delegates? A. Yes.

Q. They spent lots of money? A. I presume so.

Q. And they made representations to official representatives of the Government that there were evil widespread practices in the poultry industry that had to be corrected, did they not?

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Mr. Jacob Heller: I object to what anybody else said in regard to this case. The defendants did not say it.

The Court: No, this is on the broader question, the question of the adoption of the Code.

Mr. Jacob Heller: There is no question but that the Code was adopted.

The Court: But he is asking what led to its adoption; the necessity for it, myself, I do not see.

Q. Will you answer the question? A. I have no idea what proposals they made.

Q. Now, you have been testifying on direct examination——

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The Court: I do not know about that. He testified that his knowledge is confined to the commission merchants, that is what he said.

Q. You did not mean to testify only to the practices of the commission men on direct examination, did you? A. What is that?

Q. I say, you did not mean to testify on direct examination to the practices of only the commission men? A. No.

3341

The Court: That isn't the point at all. You are talking about whether they went down or not. He said he did not know what the other parts of the industry did about the adoption of the Code; he testified to the practices, yes.

Q. Do you know anything about the practices of the live poultry slaughter houses? A. Some of them.

Q. Market houses? A. Yes.

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Q. Some of the practices? A. Yes.

Q. Did you testify in respect to what you knew about those practices on direct examination? A. I answered every question that was asked.

Q. Is it your opinion that there were no competitive evils in the live poultry industry prior to the adoption of the Code? A. Lots of them.

Q. In so far as the slaughter house men were concerned? A. Yes, lots of them.

Q. There were a lot of them, weren't there? A. Yes.

Q. The sale, consumption and sale of poultry unfit for human consumption, was one of the worst practices, wasn't it? A. No.

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Q. It was tearing down the consumption? A. No.

Q. Of live poultry in New York City, was it not? A. No.

Q. And you know that the practice of bringing in poultry from Philadelphia by truck and not having that poultry inspected was also a large practice prior to the adoption of the Code, do you not? A. It still is.

Q. It still is, and do you know that the Schechters engage in that practice? A. I understood they bought poultry in outside markets.

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Q. Do you know that the Schechter brothers avoid inspection of poultry that they bring in by truck? A. I have heard so.

Q. You have heard so, and you know it is so, don't you? A. I have heard so.

Q. You have just heard so?

The Court: Do you know or don't you?

The Witness: I don't know it, no, I have just heard of it.

The Court: What you have heard doesn't mean anything; if you do not know say so.

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Q. Have there been any other evils in the live poultry industry so far as slaughter house men are concerned in the past five or six years? A. Yes.

Q. What other evils? A. Selling the poultry below cost.

Q. Any other? A. Well, that is the greatest evil.

Q. That is the greatest evil? A. Yes.

The Court: What is that?

3346 The Witness: The sale of poultry below cost, cut-throat competition.

Q. There has been a great deal of cut-throat competition, has there not? A. Correct.

Q. And that cut-throat competition has manifested itself by the sale of inferior and diseased chickens, has it not? A. No.

Q. Repeatedly? A. It hasn't anything to do with it; they sold fancy Indianas below cost.

Q. And in order to compete with those slaugh-
3347 ter house men that were selling fancy Indianas below cost other slaughter house men brought in inferior poultry, did they not? A. No.

Q. They sold inferior poultry? A. No.

Q. And diseased poultry? A. No.

Q. You know that is the practice, don't you? A. I do not, sir, it is not a practice.

Q. You are familiar with the anti-racketeering provision of the Code? A. No.

Q. You are not familiar with that? A. No.

Q. Have you ever read over the Code? A. Yes.

3348 Q. As adopted? A. Yes, sir.

Q. Did you read that provision? A. Yes.

Q. Aren't you familiar with it? A. Just generally.

Q. Do you know whether there have been racketeering processes in the live poultry industry? A. Yes, sir.

Q. You know that there have been? A. Yes, sir.

Q. What type of racketeering processes? A. Principally as relates to union labor.

Q. Principally as relates to corrupt delegates of labor unions, is that correct? A. I do not know how corrupt they are; I am speaking of the union labor men.

3349

Q. You know that corrupt delegates of two labor unions operating in the poultry industry have used their power over those unions to compel market men and commission men to buy their feed from the Metropolitan Poultry Feed Corporation, don't you? A. I did not know that.

Q. And did you know that in the past the corrupt delegates of two labor unions in the live poultry industry have used their power over those unions to compel the market men to rent the coops of the New Jersey Coop Company, don't you know that? A. I do not.

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Q. And to use the trucking service of the New York Live Poultry Trucking Company, don't you know that? A. I do not.

Q. Don't you know that these corrupt delegates of the labor unions have bled this industry of millions of dollars for the past ten years, don't you know that as a fact? A. I do not.

Mr. Jacob Heller: I certainly object to this line of cross examination, this is not what we are charged with.

The Court: They are not charged with these practices.

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Mr. Rice: This is laying a foundation to attack this witness' credibility in a most important respect.

The Court: But you are not dealing with the union proposition at all, nor as far as this kind of racketeering is concerned here. The only charges here that have anything to do with labor is the excess of hours and the insufficiency of payment, that is all. Now then, your so-called racketeering here has to do with intimidation that is alleged as to three different

3352 *Herbert Frankel—By Defts.—Cross*

individuals, that is all, and none of them are labor men; they are employees of the Code.

Mr. Rice: Yes, your Honor, but that is not my purpose here, I think my purpose will be manifest in a moment.

The Court: I do not see why you should inquire from the witness as to that.

Mr. Rice: I propose to attack this man's credibility.

3353 The Court: All right, but it is not connected with these defendants. There is no charge that these men were engaged in any of these practices at all, and there is no charge that any of them are officers of any union.

Q. Don't you know that those practices existed for many years here? A. No.

Q. You know that there was a trial in the Southern District of New York about six months ago, do you not? A. Yes.

3354 Mr. Jacob Heller: I object to that.

The Court: I think that is very objectionable, that is not even indirectly connected up with anything in this case, and should not be brought into this case.

Mr. Rice: But may I state, your Honor, I do not propose to show——

The Court: I know, but I think that is objectionable. You can ask him questions and all that, but we are not going into a trial which was on an entirely different basis, entirely different charge.

Q. When is the last time that you testified in any trial in any respect to the live poultry industry? A. About a year ago I think it was.

Q. Didn't you testify in March, 1934? A. About——

Q. Six months ago? A. Well, you know the case as well as I, I do not remember the date, you know the case.

Q. It was in the Spring of 1934? A. As I say if that is the date that is the date.

Q. And you testified there that there were no racketeering practices in the live poultry industry, didn't you? 3356 A. I do not recall that I so testified.

Mr. Jacob Heller: I object to it, he is going back to the very same thing over again.

The Court: No, if he wants to show he testified differently at another time than now as an expert he can do that. We are not going into what that trial was. It is perfectly proper to examine him as an expert, and that is right to attack his credibility, and if he testified differently on the same subject at some other time, then it is a proper attack. That is the question he is asking now, whether at a certain time he testified differently. It is perfectly proper to ask him that. 3357

Mr. Heller: I misunderstood him, I thought he was asking him with respect to other racketeering.

The Court: No, it is perfectly simple as I heard it.

Q. You have come here and testified that various competitive evils did not exist in the live

3358 poultry industry, haven't you? A. I said they did exist.

Q. Haven't you come here today and testified that there was no practice of selling unfit poultry? A. Unfit for human consumption?

Q. Yes. A. Correct.

Q. No practice of selling poultry unfit for human consumption? A. Correct.

Q. And there is no practice of selling uninspected poultry, you have testified to that effect? A. No, I wasn't asked to testify about that.

3359 Q. You testified today that there are various other competitive practices which are involved in this case that do not exist, haven't you? A. I do not quite understand your question.

Q. On direct examination you testified that various practices, various evil practices involved in this case did not as a matter of fact exist. You understand that, don't you? A. I don't understand what you mean by various practices.

Q. You were asked about a number of practices, weren't you? A. Yes.

3360 The Court: Better call his attention to the specific ones if he does not understand.

Q. You testified that there was no practice of rebating. A. Someone said about secret rebating.

Q. Well, there is no practice of secret rebating? A. To my knowledge there is none.

Q. To your knowledge there is none? A. Correct.

Q. And to your knowledge there is no practice or there has been no practice of selling poultry unfit for human consumption? A. Correct.

Q. Didn't you testify six months ago in the racketeering case involving the sale of coops and

feed that there was no racketeering in the feed business and no racketeering in the coop business? A. Correct.

Q. Is that right? A. That is right.

Q. You testified for Arthur Herbert and Joe Weiner and other delegates of the two labor unions? A. That is right.

Q. You testified there was no such practice? A. Correct.

Q. Now those five defendants were convicted of that very practice, were they not? 8362

Mr. Jacob Heller: Your Honor, I think that is highly objectionable.

The Court: It is, and the jury will entirely disregard it. We are not going to try these men for what somebody else did. You can ask him how he testified, but you have no right to state what the jury found as against some other defendants; and the jury will disregard it. These defendants are not charged with anything of the kind. I would like to have this trial go along, we have been at it for quite 8363 some time and we do not want you to continue that line or it won't.

Mr. Rice: Very well.

Q. Now, Mr. Frankel, did you make an effort to have this prosecution against the Schechters stopped? A. No.

Q. You are sure about that? A. Yes.

Q. You know Garland Galloway, do you not? A. Yes.

Q. Who is he? A. He is with the Code Authority.

Q. He is the assistant supervisor of the Code Authority, is he not? A. Correct.

3364 Q. Did you pay him a visit within the past few weeks? A. No.

Q. Did you discuss the Schechter case with him? A. Yes.

Q. Did you tell him that you wanted the Government to drop the Schechter prosecution? A. I did. Not that exactly, but——

Q. What did you tell him? A. I told him I thought it was a shame that they were bringing this prosecution against the Schechters.

Q. You tried to have this prosecution dropped?
3365 A. That is the only thing I discussed.

Q. You and the other commission men tried to have this prosecution dropped against the Schechters, didn't you? A. I know nothing about the other commission men.

Q. You were representing other commission men? A. No.

Q. You are sure about that? A. Sure.

Q. You say you have been doing business with the Schechters? A. Yes.

Q. You have been selling them poultry? A. Yes.

3366 Q. Large amounts of poultry? A. Yes.

Q. And other commission men have sold them large amounts of poultry? A. Yes.

Q. And they owe the commission men money, do they not? A. Except for current purchases, they owe me nothing.

Q. About how many thousands of dollars of poultry do they purchase a week? A. Possibly five.

Q. Possibly seven thousand? A. Possibly.

Q. They purchase about five or seven thousand dollars' worth of poultry per week, do they not? A. Yes.

Q. And they are about one week behind in their payments to the commission men, that is the practice of the industry? A. No, the bills are payable in ten days, and the Schechters pay their bills promptly.

Q. They pay them within ten days? A. And even before.

Q. Sometimes within seven days? A. Yes.

Q. So at all times the Schechters owe about seven thousand dollars to the commission men? A. Yes.

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Q. And they owe a part of this to you? A. Yes.

Q. And they owe part of it to you today, don't they? A. I don't know whether they have purchased anything in the last ten days.

Q. Have you ever heard Joseph Schechter say that the Schechter brothers were going to use the money they owed to the commission men for the purpose of paying any costs of this prosecution? A. No.

Q. You have not heard that? A. No.

Q. Hasn't that been a general rumor in the industry? A. No.

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The Court: You can't have testimony about general rumors.

Q. Haven't you heard that? A. No.

Q. Don't you know that that is a fact? A. I do not. I think they have more money than anybody in the industry.

Q. Aren't you afraid that if this prosecution costs the Schechter brothers any money, that you commission men are going to pay it? A. No.

Q. They are going to take it out of your hide, so to speak? A. No.

3370 Q. Didn't you, as a matter of fact, tell Mr. Garland Galloway, the Assistant Supervisor of the Code Authority, that you wanted this prosecution stopped because the Schechters owed money to the commission men? A. No.

Q. Didn't you tell him that? A. He is over there.

Q. Didn't you tell him that? A. No.

Q. He is sitting right here in this court room? A. Right.

3371 Q. This gentleman right here? (Indicating.) A. Yes.

Mr. Jacob Heller: What right has he to be in here if he is going to be a witness, your Honor?

The Court: He has been a witness. He has a right here now.

Q. Now, you told that to Garland Galloway? A. I did not.

Q. You told him that you wanted this prosecution stopped because it was going to cost you and

3372 the other commission men money? A. I have already testified that I did not.

Q. Well, let us see if you haven't done the same identical thing sometime in the past.

Mr. Jacob Heller: Meaning what?

Q. Meaning this: Do you recall paying a visit upon Mr. Osseus and myself about four or five years ago, you and other commission men? A. Yes.

The Court: Has it anything to do with the Schechters?

Mr. Rice: No.

The Court: Then it is not admissible. What he did four or five years ago about somebody else is not what we are trying here.

Mr. Rice: May I explain to your Honor the reason that I desire——

The Court: No; and if you keep on you will put this trial in some jeopardy. I tell you that you cannot do it.

Mr. Rice: Very well, your Honor.

3374 Q. Now, do you believe that there has been the practice of selling uninspected poultry in New York? A. Yes.

Q. There has been such a practice? A. Yes.

Q. And it is an evil competitive practice? A. Yes.

Q. Something that ought to be stopped? A. Yes.

Q. And the Code had ought to prohibit it, had it not? A. Yes.

Q. And you yourself spoke in favor of stronger inspection regulations at a recent hearing? A. Well, I wasn't at the hearing, but I have spoken 3375 about it.

Q. Weren't you at the recent hearing of the proposed amendments of the Live Poultry Code? A. Yes.

Q. And weren't you asked some questions in regard to the inspection provision of the Code? A. Yes, I had forgotten that meeting.

Q. Didn't you state that the inspection ought to be more rigid? A. Right.

Q. That there ought to be a better inspection? A. That is right.

Q. Why did you state that? A. Because poultry was being brought into New York which was not inspected and it was making—it was making competition bad for us.

Q. There was poultry being brought in that was not inspected? A. Yes, from outside markets.

Q. Is that correct? A. Correct.

Q. How about Dr. Ives' inspection, that is, the Bureau of Agricultural Economics' inspection at the railroad terminals of the freight poultry? A. Yes.

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Q. You are familiar with that? A. Yes.

Q. Is that inspection service an efficient one? A. Yes.

Q. Is it a careful inspection? A. I think so.

Q. And you think that they find all of the diseased chickens? A. I think so.

Q. All of the poultry unfit for human consumption? A. I do.

Q. And that they have them destroyed? A. Yes.

Q. You think that is an efficient inspection? A. I do.

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Q. You know Dr. Ives? A. Yes.

Q. You know he is an official of the Bureau of Agricultural Economics? A. Yes.

Q. A Government official? A. Yes.

Q. That he has been in charge of this inspection service since 1926? A. Yes.

Q. Since it commenced? A. That is correct.

Q. Do you think Dr. Ives is about the most competent person to speak about the inspection under his direction? A. He should be.

Q. You do not have any doubt as to his knowledge of inspection service, do you? A. No.

Q. And the character of that inspection service? A. No.

Q. You testified that no more than one-tenth of one per cent. of all live poultry coming into New York was poultry unfit for human consumption, didn't you? A. That is right.

Q. Do you know that it is the practice of the Inspection Service to destroy whatever unfit poultry they find at the time of inspection? A. That is right.

Q. You know that they keep exact records, do you not? A. I think they do.

Q. They keep records of every pound of 3380
poultry destroyed? A. That is right.

Q. Do they not? A. Yes.

Q. The date of the destruction? A. That is correct.

Q. The number of chickens destroyed? A. Yes.

Q. And the number of pounds destroyed? A. That is correct.

Q. Do you know that in the year 1933 there were 29,000 pounds—no, 290,000 pounds of live poultry destroyed by the inspectors of the Joint Inspection Service? A. No, I do not.

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Q. You do not know that? A. No.

Q. Upon what did you base your conclusion that there was only one-tenth of one per cent. of the live poultry coming into New York that was unfit for human consumption? A. On my own experience.

Q. On your own experience? A. Yes.

Q. You claim to handle a very superior grade of poultry? A. No, just average grade.

Q. Not better than the other commission men? A. No. But the grade has nothing to do with the health.

Q. How about the health, do you handle more healthy chickens? A. No.

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Q. Than any other commission man? A. No, just average. I am still not sure whether that 300,000 pounds does not represent one-tenth of one per cent.

Q. We have computed it for you and we find it is one-fourth of one per cent. A. Well, that is probably all freight, and it does not include trucked and expressed.

Q. Yes; and you know that the trucked and expressed poultry coming into New York is not—

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into New York is of a poorer quality than freighted poultry? A. Is of a better quality.

Q. Do you know much of the poultry that comes in by truck is uninspected? A. Oh, no. I would say that ninety-five per cent. is inspected.

Q. You would not say that ninety-five per cent. of what the Schechters bring in by truck is inspected, would you? A. I do not know what they bring in.

Q. You know they bring in uninspected poultry? A. I have heard Dr. Ives mention it.

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Mr. Jacob Heller: If your Honor please, I object to this. He has answered it before.

The Court: Strike out what somebody else told him. What you know yourself, I told you that before, Mr. Witness. When you are asked a question and you do not know, say so; not what somebody told you.

Q. You said there were about twenty commission men, twenty commission men in New York? A. Yes.

Q. How many of them have their headquarters at West Washington Market? A. About sixteen.

Q. About sixteen? A. Yes.

Q. Mr. Tottis' commission house is not located at West Washington Market, is it? A. That is correct.

Q. Where is it located? A. In the Bronx.

Q. In the Bronx? A. Yes.

Q. Is there some jealousy between the sixteen commission houses at West Washington Market and Mr. Tottis' commission house in the Bronx? A. No.

Q. None at all? A. No. 3386

Q. You know that the Dexter Food Company in the Bronx is one of the largest commission houses? A. They are one of the smallest.

Q. They are one of the largest? A. One of the smallest.

The Court: He said one of the smallest.

Q. Do you know how much poultry they handle per year? A. I can estimate that to be about 200 cars.

Q. About 200 cars per year? A. Yes.

Q. You were not here when Mr. Tottis testified? A. No. 3387

Q. To the effect that they brought in about one car every day? A. No, I was not here, but that is not a fact.

Q. Do you know the business of the Dexter Food Company? A. Yes.

Q. They are competitors of yours, aren't they? A. Yes.

Q. They compete with the sixteen commission men at West Washington Market? A. Yes.

Q. They are in an entirely different category from the commission men in West Washington Market, aren't they? A. Not as commission merchants.

3388

Q. Doesn't the Dexter Food Company also have a slaughter house market? A. Yes.

Q. And they sell as commission men to their own slaughter house market? A. That is correct.

Q. And the slaughter house market operated by them sells to the retailers and butchers, is that right? A. Right.

Q. They are somewhat different from the other commission men at West Washington Market? A. That is right.

Q. Is that correct? A. Yes.

3389

Mr. Jacob Heller: If your Honor please,——

The Court: What is your objection? State it.

Mr. Jacob Heller: I do not think that this is material or relavent to the issues here.

The Court: Overruled.

Mr. Jacob Heller: Exception.

The Court: He has a right to search his conscience and see whether he is biased or prejudiced.

3390

Q. You did not mean to suggest on direct examination that Mr. Tottis was simply a slaughter house man, did you? A. No, I said he was a buyer.

Q. Yes; he is a buyer for the Dexter Food Company? A. Yes.

Q. And you did not mean to say that he is simply a slaughter house operator? A. No.

Q. He is a commission man, isn't he? A. Dexter is. I said he worked for him in some capacity.

Q. And isn't it a fact that he is one of the most learned commission men in the industry? A. No.

3391

Q. Isn't it a fact that he knows more about the industry than any other commission man, with the possible exception of yourself, in the entire industry—yourself excluded? A. I would say that the history of the industry speaks for itself, and Mr. Tottis is only a very small part of it, and I do not think he knows the industry at all.

Q. You do not think he does? A. No.

Q. You think you know it better than he does? A. I certainly do.

3392

Q. Isn't it a fact that Mr. Tottis has much more contact with the shippers out of town than you do? A. That is not a fact.

Q. It is not a fact that he spends several months out of every year going out around the shippers in the various States of the union? A. I do not know.

Q. Isn't it a fact that he visits thirty or thirty-five States every year? A. I do not know.

Q. And has direct contact with the shippers? A. I do not know.

Q. And the concentrators? A. I do not know.

Q. And even with the farmers? A. I do not know.

3393

Q. You do not know? A. No.

Q. Do you do any of those things? A. Yes.

Q. Not to the same extent that Mr. Tottis does? A. Perhaps to a greater extent.

Q. Did you mean to testify on direct examination that the practice of straight killing does not have any effect upon price? A. On price?

Q. Upon the price structure. A. I do not think it has any bearing.

Q. You do not think it has any bearing? A. No.

3394 Q. You do not think that the practice of destructive price-cutting has any effect upon the price structure, do you? A. Are you speaking about the wholesale price now?

Q. Yes. A. Do I think it has any effect? No, I think it has no effect.

Q. The practice of destructive price-cutting has no effect? A. Upon wholesale price?

Q. Upon wholesale price. A. No.

Q. And it has no effect upon the price paid by the wholesalers to the commission men? A. That
3395 is correct.

Q. And it has no effect upon the price paid by the commission men to the shippers, that is your idea? A. Yes.

Q. You stated that you were present at the hearing on the proposed amendment to the Live Poultry Code a few weeks ago? A. Right.

Q. Do you recall that? A. Yes.

Q. Here was a proposed provision for price posting suggested at that hearing? A. Correct.

Q. And that most of the time was devoted to a discussion of that proposed provision? A. I
3396 came in late and if you recall the chairman asked me to make my speech as I was leaving for Chicago that afternoon.

Q. And you were permitted to make your speech out of order? A. Yes.

Q. And what did you say? A. That was on the inspection.

Q. You made a speech also on price posting? A. No.

Q. Were you asked your opinion as to the price posting provision? A. No.

Q. Didn't you state at that meeting that you believed that the absence of price posting demoralized the price? A. No.

Q. And it demoralized the price to the shipper as well as the commission man? A. No.

Q. Didn't you testify on that? A. No.,

Q. And didn't you hear other testimony on that? A. No, I came in late.

Q. Don't you know that most of the testimony was on that very point? A. I cannot testify about something that happened when I wasn't there.

Q. You did discuss the lack of inspection? A. The lack of inspection?

Q. Yes—did you discuss the proposed inspection provision? A. Why the Code was going to take over the inspection. 3398

Q. Take over all inspections? A. Yes.

Q. Taken entirely out of the Board of Health Department's hands? A. That's right.

Q. And you were in favor of that? A. Yes.

Q. What were your reasons?

Mr. Jacob Heller: I object on the ground that it is not binding on these defendants.,

The Court: He is an expert and he may be cross examined as an expert. I do not know if it is material or not. If he has a change of front it is and if he has not it is not. We are not dealing here with a concrete case now but with his testimony as an expert, whether this affects interstate commerce. We are dealing now with his qualifications. I will overrule the objection. 3399

Mr. Jacob Heller: Exception.

Q. Mr. Frankel, you were under oath when you were at that hearing? A. Yes.

3400 Q. And while you made your speech you were under oath? A. Correct.

Q. And you stated at that meeting that the lack of inspection on trucked poultry had the effect of demoralizing the price structure, did you not? A. I don't think I mentioned the price structure.

Q. That it did have an effect on demoralizing the prices? A. No.

Q. Didn't you, now? A. No, if you want me to tell you what I did say I will tell you.

3401 Q. We will let you tell us later; didn't you testify at that hearing just a few weeks ago that the lack of inspection had the effect of demoralizing the price in New York and that that in turn had the effect of demoralizing the price received by the interstate shippers, didn't you testify to that effect? A. I don't think I did.

Q. You are not so sure? A. I am pretty sure I did not.

Q. And you would like your testimony shown to you? A. If you have it, sure.

3402 Q. We are trying to get it. Now will you say you did not testify at that meeting that the lack of inspection had some effect upon prices? A. I don't recall that I testified. I was invited to make a speech and I did.

Q. You are not quarrelling with me on the word testify, are you? A. No, I am not. I don't recall that in this talk I ever touched on the question of prices.

Q. Now weren't you asked the question as to whether or not the lack of inspection had any effect upon prices? A. I don't recall.

Q. Would you say you were not asked that question? A. There were some questions asked.

after I was finished, I do not recall what they were.

Q. Didn't you state it would have the effect upon the price and would demoralize the price? A. I don't recall that part of it.

Q. You would not state you did not so testify? A. No.

Q. Now as a matter of fact wouldn't the failure to inspect have an effect upon the price? A. No.

Q. But you are not sure that you did not so testify at that hearing? A. I would say, if you pin me down, that I don't believe I brought up the question. 3404

Q. I am not talking about who brought it up. A. That I testified to that particular phase.

Q. You are not sure? A. I am quite certain I did not mention that question.

Q. Weren't you asked, step-by-step, whether or not the failure to inspect would have an effect upon the price in New York and upon the price received by the commission men and upon the price received by the shipper in other States? A. I don't think so.

Q. Weren't you asked those identical questions? A. I don't think so. 3405

Q. And didn't you say it would have the effect upon the price received by the commission man and the shipper in the other States? A. I don't think so.

(Short recess.)

Q. You know Garland Galloway real well? A. Yes.

Mr. Rice: Will you stand up, Mr. Galloway?

(Mr. Galloway stands.)

3406 *Herbert Frankel—By Defts.—Cross*

Q. This gentleman here? A. Yes.

Q. At one time he was in the employ of the commission men, was he not? A. That is correct.

Q. For how many years? A. Oh, ten or a dozen.

Q. Ten or a dozen years? A. Yes.

Mr. Jacob Heller: If your Honor please, may I know the reason for this line of examination, what bearing it has

3407 on these defendants?

The Court: What was it?

Mr. Rice: I propose to show that he has taken a different position with regard to these Code provisions then at some previous time.

The Court: If it affects his credibility as an expert it is admissible.

Mr. Jacob Heller: I didn't know what it was.

The Court: This is not running to the substantive counts, this runs to his qualifi-

3408 cations. When a man testifies as an expert they can show that he testified differently before, it goes to the weight of his testimony as an expert.

Q. You say you were the leader of the commission men prior to the adoption of the Code? A. Yes.

Q. For how many years prior to that time? A. I do not recall.

Q. The commission men had an association, didn't they? A. Yes.

Q. And the association employed Mr. Garland Galloway? A. Yes, sir.

Q. As the man to look up the credit of the slaughter house operators, is that right? A. Correct.

Q. You knew him very well? A. Yes.

Q. During the months that the Code was being discussed in Washington, D. C., did you send Garland Galloway to Washington as a representative of the commission men? A. Yes, sir.

Q. On repeated occasions, did you not? A. Yes.

Q. You sent him there to get in the provisions regarding the sale of uninspected poultry, did you not? A. I do not recall just what—I will tell you——

Q. Just a moment, just answer my question. A. I do not recall what provisions were in there.

Q. Didn't you send Mr. Galloway down there to urge the adoption of the following Code provisions: The provision prohibiting the sale of unfit poultry, the provision prohibiting the sale of uninspected poultry, and the provision regarding straight killing, did you not? A. I do not think I sent him there to do that.

Q. You wouldn't be so sure about that, would you? A. No.

Q. Do you think you might have sent him down for that purpose? A. As a matter of fact I didn't send him down directly——

Q. Well, the commission men sent him down? A. Yes.

Q. They paid his expenses? A. Yes.

Q. And you contributed to the payment of his expenses? A. The association did.

Q. And he was the official representative of the commission men in Washington, D. C., is that correct? A. That is correct.

3412 Q. Don't you know that as the official representative of the commission men Mr. Galloway urged the adoption of the provision prohibiting the sale of unfit poultry? A. I hope he did.

Q. You hope he did? A. Yes.

Q. And you asked him to, didn't you? A. I probably did.

Q. And you thought it was a proper Code provision, didn't you? A. Yes.

Q. And you thought that the practice of selling unfit poultry in New York was a flagrant
3413 practice, didn't you? A. I thought it was a flagrant practice?

Q. Yes, a widespread practice, did you not? A. No.

Q. You wouldn't waste your money sending Galloway down to Washington to urge the adoption of a provision that had no effect on the industry, would you? A. No.

Q. Then you thought that the provision prohibiting the sale of unfit poultry would have an effect upon the industry, didn't you? A. It was just one of the minor things, that is only
3414 a minor clause.

Q. That is one of the minor things? A. Correct.

Q. The sale of diseased poultry to our public here is a minor thing? A. If you want to phrase it that way, yes.

Q. Don't you know that the sale of diseased poultry has cut down the consumption of poultry? A. No, it hasn't.

Q. You know that you urged Garland Galloway to get the Code provision adopted prohibiting the sale of uninspected poultry, do you not? A. If that was in the original draft I urged it; I do not recall what was in the original draft.

3415

Q. You wouldn't say you didn't urge it? A. No.

Q. And you urged Galloway to ask for a Code provision prohibiting selective killing, did you not? A. I did not.

Q. A Code provision requiring straight killing, didn't you? A. I was interested in the provisions pertaining——

Q. No, answer my question. A. I would say I do not know.

Q. You do not know? A. No.

3416

Q. You wouldn't say you didn't ask it? A. I was interested in the commission merchants' end, I can only say, and as a matter of fact——

Q. Just a moment— A. I didn't——

Q. Just answer my question.

Mr. Jacob Heller: If your Honor please, I think he should be permitted to answer so that we can get the complete answer.

Mr. Rice: I am asking him about the straight killing provision.

3417

The Court: I know, but he started to answer you that that didn't interest him.

Mr. Rice: Let me withdraw this question and ask another then.

Q. You would not say that you did not ask Galloway to urge the adoption of a provision prohibiting the sale of poultry by selective killing? A. I would say that I did not discuss with Garland Galloway any provisions pertaining to slaughter house men, and that is one of them.

Q. Galloway represented only the commission men, did he not? A. Correct.

3418 Q. And anything he brought down to Washington was brought as the representative of the commission men? A. Yes.

Q. Is that right? A. That is correct.

Q. And you reduced that to writing, didn't you? A. I presume so.

Q. You know you did, don't you? A. Yes.

Mr. Rice: This is all.

Redirect examination by Mr. Jacob Heller:

3419 Q. You stated on cross examination that the sale of diseased poultry is a minor thing. Will you tell us why? A. I did not say it was a minor thing. I do not think there is any diseased poultry sold.

Q. Is that the reason why you thought it was a minor thing? A. Yes.

Q. You stated on cross examination that you knew there was such a thing that is known as cut-throat competition in the industry? A. Yes.

Q. Do you also know whether that competition also exists in other industries? A. Yes.

3420 Q. There is nothing peculiar about that in the poultry industry, is there? A. Nothing strange about that.

Q. Do you know, sir, whether the cut-throat competition that you were referring to is keener today than it was before the Code came into effect? A. It is keener today.

Q. Much keener? A. Yes.

Q. There is no question about that in your mind?

Mr. Rice: I object to leading the witness on this.

The Court: He is your witness. Do not lead him. You are not cross examining.

Q. I call your attention to a definition of a cull given by F. A. Bushell, Senior Agricultural Economist, Division of Dairy & Poultry Products, Bureau of Agricultural Economics, contained in a technical bulletin No. 107, entitled, "The Wholesale Marketing of Live Poultry in New York City," which is as follows——

Mr. Rice: Just a moment. If your Honor please, we are not concerned with any definition of culls here, particularly with respect to this witness, other than the definition of cull in the Code. 3422

The Court: We are not concerned with any definition of cull except that which is in the Code.

Mr. Jacob Heller: This particular definition——

The Court: It may be in any book you like, however sacred the book may be, but it does not prevail here. We have a definition of a cull in the Code.

Mr. Jacob Heller: This particular definition happens to be in—— 3423

The Court: It is the definition in the Code that we are concerned with.

Mr. Jacob Heller: I respectfully except.

The Court: You and the witness have already given your separate definitions. It is the one in the Code that counts.

Q. You stated on direct examination that you had a conversation with one Galloway, assistant supervisor of the Code Authority, in reference to the dropping of the prosecution against the Schechters. Will you give us the entire conversation relating to that? A. The entire conversation?

Q. Yes. A. It was over the telephone.

Q. Yes. A. And I said that I thought to select—I do not know my exact words.

Q. As best as you can. A. To pick out simply one man and go after him, when he was doing only what other people were doing, was not just. In principle I felt that the Code should be upheld so long as there was a Code, but I did not think that we should prosecute just one man who was doing what everybody else was doing.

3425 Q. But there is no question in your mind, is there, sir, that Mr. Tottis purchased from you like a buyer, I mean, a buyer in the category of the Schechters? A. He purchased poultry from us.

Q. Do other commission men like this purchase poultry from you? A. No.

Q. They get it themselves from the cars, do they not? A. Correct.

Q. Do you know a party by the name of Benjamin Forsmith? A. Yes.

Q. Does he purchase poultry from you? A. No.

3426 Q. Were you used as an expert first in the practices of the poultry industry by the Government? A. Yes.

Q. They did not question your qualifications at that time, did they? A. I don't know.

Mr. Jacob Heller: That is all.

Mr. Rice: That is all.

(Witness excused.)

LOUIS SPATZ, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. Joseph Heller:

Q. Mr. Spatz, what is your business, please? A. Acme Commission Company, president, receiving of live poultry.

Q. Speak up a little louder so the jury can hear you. A. Connected with the Acme Commission House, as president, receiving of live poultry. 3428

Q. Located in the City and the State of New York? A. Yes, sir.

Q. Have you a place of business at the West Washington Market? A. Yes, sir.

Q. How long have you been in business? A. Entire business or just in the Acme?

Q. No, what has been your experience in the live poultry industry? A. Since 1912.

Q. Since 1912? A. That is right.

Q. Twenty-two years? A. That is right.

Q. And during that course of experience did you buy and sell poultry? A. Yes, I did. 3429

Q. And from every State in the Union? A. I did—well, not every State, poultry-producing States.

Q. Will you explain in detail some of your experiences as a merchant and buyer and as to your observations, as to your knowledge of the industry itself? A. As a commission man or as a buyer?

Q. Were you ever in the slaughter house business? A. I was.

Q. Wholesale? A. Yes.

Q. As to all of those three functions? A. You mean pertaining how it is being operated?

3430 Q. Yes; give us a short history. A. Well, we received poultry from through the country that is bought by what they call a huckster, what goes out with a horse and wagon to the farmer. This huckster, so-called, is bringing it into the shipper which he loads it up straight carloads and ships them to New York at the railroads, and as a slaughter house man we purchase our supply and sell them to the butcher and the retail chicken dealers, and when I say "our supply," I buy it from the receiver.

3431 Q. That is your operation as a slaughter house man? A. That is right.

Q. As a commission merchant? A. Well, we just sell it to the wholesale men, the slaughter house men.

Q. And you would receive the poultry from all over the country? A. From the poultry-producing States.

Q. In carload lots? A. Carloads and truck loads.

Q And how much business does your firm do?

3432 A. In the year 1933 I think we were the next largest receivers in New York.

Q. About what percentage of all the poultry? A. About fourteen per cent.

Q. So about fourteen per cent. of all the poultry that comes into the City of New York you handle? A. Yes.

Q. Now, who is the largest concern? A. Julius Castein.

Q. Is he in court? A. I believe so. Yes, he is over there (indicating).

Mr. Joseph Heller: Will you stand up?

(A man stands up in the courtroom.)

3433

Q. Do you know what percentage Mr. Frankel's concern does? A. About the same as ours, but I don't know exactly.

Q. You three are the largest merchants? A. No, there are five largest merchants; there is the Chelsea Live Poultry Commission and the Western Commission Company.

Q. You have had a lot of trouble yourself, haven't you? A. Pertaining to what time, my family or who?

Q. You were prosecuted by the Government? A. I was.

3434

Q. And you were convicted of a crime? A. I was. We have been prosecuted.

Mr. Rice: Now, just a minute, your Honor. If this is going to be—if he is going to impeach his own witness,——

The Court: Now just a minute. If he has been convicted of a crime, that would simply go to his credibility.

Mr. Rice: Yes, your Honor, and I should like to go into it thoroughly.

The Witness: That is all right; I will give you a chance.

3435

Q. Continue. A. In 1929 Mr. Rice and Mr. Osseus, we were prosecuted at that time and we were convicted due to some kind of politicians that were looking for money.

Q. Do you see any members of the Code Authority here? A. I do.

Q. Will you mention some of them and point them out in court? A. Well, the Code authority.

Q. Yes. A. There is the Supervisor, Mr. Peterson, and there is Mr. Galloway and Mr. For-

3436 smith, and there are so many up there I can't remember them all.

Q. Do you see anybody else? A. Not that I know. As I say, there is so many up there I don't even know them.

Q. Now, you pay the salaries of those gentlemen who are sitting there now? A. We do.

Q. You contribute to it? A. About $5,000 a year direct and a whole lot more indirect.

Q. And the gentlemen are sitting right here in the court now? A. That is right.

3437

The Court: Now just a minute, Mr. Witness. I can tell you now that if any question is asked you the answer to which might tend to incriminate or degrade you in your community, you have a right to refrain from answering, and that anything you say in this court is admissible in any court, that is, may be used against you in any court.

If you will just answer the questions asked you we will get along better.

3438 The Witness: Thank you, your Honor.

Mr. Joseph Heller: I thought he answered the question, your Honor.

The Court: He did, but he has volunteered some foot-notes.

Q. Have you stated the market conditions as they existed in the City of New York? A. I do.

Q. And as they existed in any other State? A. Yes.

Q. What is the extent of your experience? A. The extent of the experience is successful.

Q. You operated successfully financially? A. That is right.

Q. During the entire period of time? A. That is right.

Q. You made purchases and sales? A. Yes, sir.

Q. You have inspected marketing conditions in Chicago? A. I did.

Q. Philadelphia? A. I did.

Q. All important centers in the United States which pertain to poultry? A. I did.

Q. State of New York? A. Yes, sir.

Q. Very familiar with it? A. Very familiar. 3440

Q. Do you know of your own knowledge whether or not the State of New York is the dumping ground for diseased chickens? A. No, sir.

Q. Is there such a condition existing today, or did it exist at any time up to today? A. Can I answer in my own way?

Q. Answer it your way? A. The State of New York is a dumping ground for surplus, but not for diseased chickens; the City of New York, I mean.

Q. By surplus what do you mean? A. All other 3441 markets are limited to their supply. Assuming Newark, they can use about twelve to thirteen cars a week, that is their limit of supply; if they get sixteen, three cars will be sold to New York; and so goes along Philadelphia, Boston and all other markets.

Q. In other words, all the poultry that cannot be sold, although fit for human consumption, is sent to the City of New York? A. That is right.

Q. You do not call those diseased chickens, do you? A. No.

Q. What do you know about the grading of chickens? Explain the terminology used with ref-

3442 erence to the classification, what kind of chickens there are, such as first, second, and so on. A. Well, we get, for instance, the southern poultry, southern quality poultry at this time of year is called a poor grade; that same quality around March and April will be the most desirable grade.

Q. Why do you say it will be the most desirable grade in March and April? A. On account of the changeability in the seasons in the country.

Q. In other words, do you mean to say some States do not raise and send chickens to the State
3443 of New York during certain times of year? A. That is right.

Q. That is the reason there are inferior qualities of chickens in one month and superior quality during other months? A. That is right.

Q. What kind of chickens come into the City of New York, good or bad ones? A. All kinds.

Q. Well, explain what they are. A. There are, as far as grades are concerned, we call them in our quotations Indiana, Fancy Western, Western, Average and Poor.

Q. Well, take the worst kind, the poor. A.
3444 Yes.

Q. Are those diseased chickens or are they fit for human consumption? A. They are not diseased, they are fit for human consumption, I would eat them myself.

Q. And when you say "poor" you mean they are thin, thin-breasted? A. Thin-breasted, small size.

Q. Weigh little? A. Small size.

Q. That is all that is meant by poor quality? A. And probably sometimes too hard.

Q. Too hard? A. Yes.

Q. They can be eaten? A. You have got to cook them longer.

Q. That is all the matter with them? A. That is all.

Q. You can't die from eating that kind of chicken? A. I do not know of anybody that did.

Q. Now, you have a price quotation in the City of New York, have you not? A. We have.

Q. And do I understand you to say that the price quotation consists of the grades you just enumerated? A. Yes.

Q. And the price will vary in so far as the quality is concerned? A. The price would vary 3446
on the fowl as far as quality is concerned, and on chickens, ducks, turkeys, geese, and all other commodities.

Q. And the price for the poor chicken would be less than for the good quality chicken? A. Yes.

Q. Isn't that correct? A. That is right.

Q. And that varies from time to time? A. Practically at all times, probably only two months during the year you won't find it.

Q. There are certain classes of people that buy the poor grade chickens? A. Sure they do. 3447

Q. Nothing wrong about that? A. No, sir.

Q. Can you explain to the jury how the price is determined in your market from day to day? A. We get together around 60th Street, that is, as far as freight poultry is concerned, received by freight in the railroad yards, and I would have six or seven cars for sale today, and I would get an idea of what the poultry for the week, the receipts, are, to find out how the sale in the slaughter houses is, and to my opinion the poultry also would cost in the country so much to produce, and it should be about eighteen cents, and I would go down to the railroad and ask eighteen

3448 cents for fowl fancy grade. And if a buyer agrees to pay eighteen cents, that constitutes a sale for the Urner Barry Quotation quotation.

Q. They take those figures from you? A. That is right.

Q. Let us say you determine the price to be eighteen cents at 10 a.m. in the morning for a certain grade of chicken—— A. That is correct.

Q. Is it possible and does it frequently happen that the same grade of chicken, the same quality chicken, may be sold for less on the very same

3449 day?

Mr. Rice: If your Honor please, I think this witness should be permitted to testify rather than simply answer yes or no to leading questions.

The Court: Well, that is true, but it is hard to present this to him otherwise, this particular question. That is true, but I will let that question go because it is pretty hard to present that in any other way.

Mr. Joseph Heller: It is my under-

3450 standing with respect to experts that I may pursue the same line as my friend, I may have the same leeway.

The Court: I will give you a certain leeway, but that question couldn't be presented much easier.

Mr. Joseph Heller: Yes. Will you repeat the question?

(The reporter repeated as follows: "Let us say you determine the price to be eighteen cents at 10 a.m. in the morning for a certain grade of chickens, is it possible and does it frequently happen that the same grade of chicken, the same quality

chicken, may be sold for less on the very same day?")

A. Yes, it is.

Q. And why does such a situation arise, what is your explanation? A. It is on occasions, sometimes weather conditions, sometimes the public don't buy that particular week, and sometimes the reason the prices are too high, or an extra surplus got in from other markets to New York.

Q. And when you speak of an extra surplus, do you mean good wholesome chickens? A. Yes, sir. 3452

Q. By that you also mean that they could not use those chickens in the other State because there was no demand for them? A. Well, I had that occasion yesterday, Philadelphia sent me in a load of chickens because they couldn't use one of the finest grades in the country.

Q. And you had a market for it here? A. Yes.

Q. Isn't this the greatest market there is in the United States, the City of New York? A. For live poultry it is.

Q. Isn't that right? A. That is right.

Q. That demand does not vary very much? A. 3453
It is the price that makes the public buy.

Q. When do the public buy more? A. When the price is low.

Q. And you have found that from your actual experience from day to day? A. That is right.

Q. You found the same condition to exist with other merchants? A. I presume so. I don't know much about it. I know in the egg business and in the dressed poultry, we found it the same way, any food commodity in comparison.

Q. You have occasion to examine Government reports? A. What kind of Government reports?

3454 Q. Pertaining to the poultry business. A. We get Government reports pertaining to the inspection.

Q. Anything else? A. Not that I know of.

Q. Do you use the Urner-Barry service? A. Do we what?

Q. Urner-Barry service? A. We do.

Q. That tells you all about the industry? A. That is right.

Q. As it is gathered from the different merchants? A. Most of the times I tell him; I know

3455 everything.

Q. They come to you for information? A. The reporters do.

Q. Isn't that right? A. That is right.

Q. Every day? A. Practically.

Q. And they go to other merchants for information? A. That is right.

Q. That is how they get it up? A. That is right.

Q. Isn't that the source that the Government gets its information? A. I wouldn't say that.

Q. You do not know that? A. I don't know.

3456 Q. Can you tell the jury from your experience what factor in particular determines whether a poor chicken comes in or a better grade chicken comes into the City of New York from time to time? A. Well, you will find weather conditions, a car of poultry that will leave somewheres around the northern part of Illinois, northern part of Indiana, Missouri, they take four to five days to arrive here. That poultry is going through all kinds of weather conditions. If that car is routed by way of North Buffalo in the winter time it hits hot—cold weather, and when they get into the 60th Street yard the weather is changed, and it has much effect on the poultry,

catching colds very frequently. You find it going by the southern route and you will find very hot weather, like Arkansas, Tennessee, Carolinas, and during the hot weather you will find that they just drop off in the car, drop off on the way of shipping them.

Q. Then when those loads of chickens come into the City of New York they receive the proper inspection? A. They do.

Q. Then you sell them to slaughter house people? A. That is right.

3458

Q. Such as Schechters? A. That is right.

Q. They take them in crates? A. That is right.

Q. Just what is the operation between the time they come in and the time that they get chickens? A. The time they come in there is a car—a man, which we will call him a car man in our line, who has to take care of that poultry all through the route, and feed it up before he unloads, then we apply for inspection. After the inspector goes through, destroys what he thinks is unfit for humans, and the rest is by five men loaded in the coops, sold to the particular buyer, loaded on his truck or on hired trucks, and he takes it to his own place.

3459

Q. You have done business with the Schechter brothers? A. I did.

Q. Do they owe you any money? A. Not right now. I think about three coops.

Q. Trust them all they want? A. Unlimited.

Q. You are not afraid of their credit risk? A. No, sir.

Q. You would like to have some more customers like that? A. I hope so.

Q. Do you know this Mr. Tottis? A. I do.

Q. Do you know that he went into bankruptcy? A. I do.

3460 Q. Tell me about it.

Mr. Rice: If your Honor please, this is nothing but leading questions.

The Court: That is right.

Q. What do you know about Mr. Tottis? A. Unsuccessful company.

Q. I did not get that. A. They are an unsuccessful company.

Mr. Rice: I object to that characterization, if your Honor please.

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The Court: I do not know. If he knows, I will let him say so.

Mr. Rice: That is a conclusion on the part of the witness.

The Court: I do not know. He said they went into bankruptcy. I suppose that is some animus.

Q. Can you tell us why he is an unsuccessful business man? A. When this company organized in 1927, I believe, under the Dexter Poultry Company, and a subsidiary of the old Salthe Poultry Company, they were in competition with my own slaughter house, I was a slaughter house operator at that time, and their original idea was not to go in, into the slaughter house business——

3462

Mr. Rice: If your Honor, this is obviously incompetent. The question also is improper. He asked the witness why.

The Court: We are dealing with the one man. Anything about him, all right.

Q. Do you know whether he is president of the concern? A. Mr. Tottis?

Q. Yes. A. I don't know.

Q. Do you know what his connection with the concern is? A. I think he is a solicitor for the concern.

Q. Now have you ever seen him in the West Washington Market? A. Very often.

Q. Does he buy merchandise from your concern? A. Not much.

Q. Does he buy any particular kind of poultry? A. All kinds.

Q. Inferior? A. When he comes down and buys inferior I get the top price.

Q. That is the kind of a merchant he is? A. Well, he cannot help it. 3464

The Court: (To witness.) You are friend to him?

The Witness: Not friendly. He only comes down when he needs me. He is not a steady account. I am going to try to get all I can when he does come down.

Q. You say you were also in the slaughter house business? A. I was.

Q. And you know the operation of a slaughter house? A. I do. 3465

Q. Now what was the most evil practice that you know of? A. In the slaughter house business?

Q. Yes. A. No. 1, I cannot get bills collected.

Q. What is the next one? A. The butcher, all we know him is by a number, and it disappears overnight and a new number is born. No. 2 is the competition amongst ourselves due to the overhead, that we have, trying to cover the overhead.

Q. And when you say overhead, the overhead being big, do you mean the labor situation? A. The labor and the shochets.

3466

Q. You know as a fact that the ordinary laborer or workman earns as much as $60 a week? A. At the time that I was in the slaughter house business my men never went home under $60 and as high as $110 a week.

Q. Now did you listen to the questions put to the last witness by Mr. Rice? A. Some.

Q. Did you hear about union racketeering? A. I did.

Q. And was that one of the conditions? A. That was.

3467

Mr. Rice: Do you mean one of the evil conditions existing?

Mr. Joseph Heller: Yes.

Mr. Rice: Then, your Honor, I expect that that opens up the door on that subject and that I may go into it on cross examination.

Mr. Joseph Heller: You opened it up.

The Court: Well now, we are dealing with racketeering under this Code and that is all we are concerned with. The

3468

charges here in this case are difficult. I think it would be well if we all stuck to the case. We have enough of them.

Mr. Joseph Heller: That is right, your Honor.

Q. Now can you tell us from your experience whether or not a man paying under 60 cents an hour to his help, whether that situation would affect the price structure of chickens on any day in the City of New York or elsewhere? A. Under 60 cents an hour?

Q. Well, say 50 cents an hour to his help. A. The price would go down on poultry.

Q. In what industry? A. In the live poultry industry.

Q. Where? A. I don't think we both understand each other, Mr. Heller. Do you mean in New York?

Q. Yes, New York. A. Yes.

Q. Now suppose the Schechters employed a man and employed him only at 50 cents an hour instead of 60 cents, would that affect the price of poultry which you were going to charge? A. Yes.

Q. In what way? A. It would cost me less 3470 to operate.

Q. As a commission merchant? A. As a slaughter house man.

Mr. Rice: He asked him about the Schechters who are slaughter house operators.

Q. Now will you listen carefully to my question.

Mr. Rice: I object to his impeaching the witness, your Honor. 3471

The Court: I don't think he is impeaching him.

Q. You, as a commission merchant, sell chickens to Mr. Schechter as a wholesale slaughter house? A. That is right.

Q. Now suppose the Schechters pay less than 60 cents for laborers, ordinary laborers, would that affect in any way the price you as a commission merchant would sell them? A. Probably indirectly that the farmer would get more money that way. If he would sell them for cheaper I would get more money. If we sell in New York

3472 as cheap as we sell them the higher our wholesale market to the buyer is. If they go out and sell to the consumer at 15 cents the over-supply is eaten up in one day and the following day our price raises, and when it does that affects the country.

Q. So by selling it cheaper the farmer gets more? A. Indirectly, yes.

Q. Would the fact that the Schechters were not to kill straight in any way affect the quality of chickens that come into the City of New
3473 York? A. Would it what?

The Court: Read it.

(Question repeated by the stenographer.)

A. None.

Q. The quality of the chickens that come in have nothing to do with straight killing? A. No.

Q. That is fixed according to the supply—— A. And demand.

3474 The Court: Suppose you let him tell us what fixes it. He is your witness.

Q. Yes. Does it depend upon any other conditions? A. Any other conditions of what? Give it clear.

Q. Of the quality of poultry—— A. Yes.

Q. Coming into New York? A. Would depend on any other conditions?

Q. Yes. A. I think I have stated practically every one right now; I do not know of any more.

Q. Would the drought have something to do with it? A. That is only this year.

3475

Q. It did have something to do with it? A. On lots of poultry that comes out of Kansas, Missouri, this year it runs poorer than it ever ran in history, and that is all due to the drought. I have inquired from shippers what the trouble is with the poultry, and they just said it was due to the drought situation they have in that country. The fact is I turned a car down the other day on account of that fact.

Q. Did the Code do anything for your industry? A. Not to profit extent, no.

3476

Q. Did you sustain losses? A. Plenty.

Q. It has hurt your business? A. My business it did.

Q. Have you ever heard of the term culls? A. I did.

Q. What do you understand by the meaning of the word cull? A. Just anything that the inspector condemns——

Mr. Rice: If your Honor please, this does nothing but introduce confusion into the record, to have the witness define his understanding of the word cull. Now, we are concerned in this case only with the sale of poultry unfit for human consumption.

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The Court: That is correct. What difference does it make what he thinks a cull is? The only culls we are concerned with here are the culls described in the Code.

Mr. Joseph Heller: Very well.

The Court: Culls are described specifically in the Code; any other meaning of the word cull does not mean anything at all here.

Q. What do you understand by an unfit chicken? A. A water-belly, or what we call an egg-bound chicken.

Q. Would you eat that kind of chicken, an egg-bound chicken? A. No.

Q. Is that an edible chicken? A. I won't eat it; I won't say whether it is edible or not; I will leave that to the Health Department rulings. An egg-bound chicken has got——

Q. What is an egg-bound chicken? A. A chicken gets egg-bound, it keeps on accumulating
3479 eggs and the eggs turn bad in it, and it just develops what you call a tumor. A sick chicken which the inspection condemns after it catches the croup, like a cold, most of them die, they don't last too long.

Q. About how long does it take them to die? A. After they catch a cold, I think a chicken will not live over thirty-six hours.

Q. Do you know whether any carloads of culls come into the City of New York? A. No, sir.

Q. Is there such a thing? A. Not in my experience.

3480 Q. Is there such a thing as price quotation or culls? A. We have none.

Q. Never existed in the industry? A. Not in the live poultry industry.

Q. Can you tell us why there is less consumption or less need for live chickens at this time? A. At this time, it is a long story.

Q. Tell us the story. A. This industry is being painted very black all over wherever it has gone, the Jewish Orthodox public is gradually being taken away, chased away into dressed poultry. We are consuming less live poultry and more dressed poultry all the time, more dressed poultry at a higher price.

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Q. How does the price compare as far as dressed poultry is concerned with respect to live poultry? A. Sometimes dressed poultry is sold cheaper to the consumer than our live poultry is.

Q. About what percentage is there in difference between the two? A. It varies according to the time of year.

Q. Is it sometimes five cents less per pound? A. Well, I wouldn't say. You take when you get friers, you will find the A. & P. advertising them at nineteen cents to the consumer, and the live market will probably be twenty-one cents; before it reaches the consumer that twenty-one cents would add on ten cents additional, so that the price should be thirty-one cents for the live poultry as against nineteen cents for the dressed frier.

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Q. That is nineteen cents as against thirty-one? A. That is right.

Q. And you have found that even the Jewish people are now eating dressed chickens instead of live chickens? A. Those people are, yes; it is cheaper and it is cleaner, it is all plucked clean, and it is cheaper.

3483

Q. Do you think from your experience that that situation had something to do with the falling off of the consumption of live poultry?

Mr. Rice: I object to this constant leading.

The Court: Well, he has said it already, there is no use going over it, he said that.

Q. Can you tell us whether any other conditions exist which in your opinion contribute to

3484 this situation? A. That we are using less consuming?

Q. Yes. A. It seems the public hasn't got the money. If we get a cheap price, they can buy. We can sell poultry a lot if we can sell for less than they practically can afford it right now.

Q. Would you say in your opinion that if additional charges were made to a concern like the Schechter brothers, so that the price would be increased, that under those circumstances the consumption would be less or more? A. Sure
3485 would. We had occasions where a shipper from Dakota shipped two cars of chickens, has not drawed no draft at all, and he was overdrawn. That means he did not get nothing for his merchandise, and he still owes the commission men $150 for the two cars of poultry that he gave to them.

Q. Do you know what kind of chickens come into the City of New York or the State of New York? A. City of New York, I do.

Q. How they compare with other States? A. City of New York, but I don't know about the
3486 State of New York.

Q. City of New York? A. City of New York, compared with others, are the good and best poultry in the United States.

Q. There is no question about that? A. There is no question about it.

Q. The best poultry comes in here? A. You will find that a car of poultry in Indiana, if it is right there and then dressed for dressed poultry, it will appear to be better because it takes them four days en route, cooped up into a car, and naturally after taking a chicken off the farm and putting her in a coop like that for four or

five days, she is losing quality a little, but it is still the best chicken in the country.

Q. That is the only way you can bring chickens into the City of New York? A. Either that way or trucks.

Q. Do you know whether there has been a demand in the City of New York for inferior chickens as such? A. As average poultry—well, we call it average, it is.

Q. There has been an average demand for poultry? A. It has.

3488

Q. Is there a special market in the City of New York solely for the purpose of selling inferior poultry? A. You will find in every part of the Metropolitan area, like in the Bronx, consuming, Bank Avenue, Jenkins Street, and 165th Street, that if any of the women go down and buy a chicken they expect to buy a cheap chicken, and that is the territory for it. You will find it in every borough, such sections.

Q. Are such chickens diseased chickens? A. No, sir.

Q. Perfectly good for human consumption? A. Just poor fowl.

3489

Q. And by poor fowl I understand you to mean they weigh less? A. They weigh less. A poor fowl, you will find in Indiana today, that it is the most desirable fowl in the City of New York, and around April, or March, rather, you will find that the most undesirable in New York, you will find the price on the Indiana will vary three cents lower than today, the southern poultry, which is five and six cents poultry, which just varies by that condition, time of season.

Q. Will you explain and express this situation as you have now given it to the jury in pennies per pound? A. In pennies per pound?

3490 Q. Yes. A. Now, assume today an Indiana fowl is quoted eighteen cents, an average fowl is quoted fifteen cents. There is no poor quotation today because there haven't been any poor cars on the market today. If a poor car would be on the market, that would be quoted thirteen cents. That same poor car would probably come this time of the year from Mississippi, Arkansas, Texas, some part of Tennessee. Now, the same car of poultry will come in here, sometimes around April, where the market will be
3491 nineteen cents, and that car will bring nineteen cents in comparison on the Indiana car, which will only bring sixteen.

Q. So, in other words, it is possible for the best chickens, the best grade of chickens during one part of the year, will bring in a price of nineteen cents and during another part thirteen cents? A. Correct. The reason of that is, the Jewish public wants a fat chicken this time of the year, and fat chickens, the time that the laying season is bad, there is very few of them, and, well, later on every chicken has got
3492 a little fat, but the Indiana chicken is naturally heavy, she wants a smaller chicken, and a smaller chicken comes out of the South all during the year, southern States.

Q. When there are no fat chickens in the City of New York there would be a lesser demand? A. It would be.

Q. And when the chickens are fatter the Jewish people consume more? A. They consume for the purposes of fat.

Q. And that has something to do with the fixing of price? A. It has.

Q. And it has something to do with the fixing of the price, that is, what the commission man gets for the chicken? A. Yes.

Q. And it has something to do with what the farmer gets for the chicken? A. It has.

Mr. Rice: This is not cross examination, your Honor, and he is putting the words into the witness' mouth.

The Court: Yes, that is right.

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Q. Has that condition something to do with it? A. It has a lot to do with the condition because if the woman wants a fat chicken she knows she has to take a seven or eight-pounder to get some fat out of it. They cannot produce it down here at these present prices.

Q. Have you ever sold, during your experience, any diseased chickens to the Schechters? A. I did not.

Q. Do you know anybody that has ever sold diseased chickens to the Schechters? A. I don't know of anybody selling diseased chickens to anybody.

3495

The Witness (To the Court): May I ask your Honor one question for information?

Mr. Heller, when you question about diseased chickens do you refer to those stamped "For immediate slaughter"?

Q. Are there such chickens? A. Sure, whenever they catch colds, Dr. Ives inspects them, and he recommends them for immediate slaughter.

Q. Now, do I understand you to say that chickens with some colds are passed for imme-

3496 diate slaughter? A. Yes, he marks it with red chalk, and then he puts a label on the car that it is to be disinfected before any other poultry is to be put in. He recommends to us that we sell it immediately, otherwise if we let it stay, otherwise they will drop off one after the other.

Q. Did you ever hear Mr. Peterson say to you that he was going to convict the Schechters? A. We told him that. It happened in Mr. Werner's office. We called Mr. Peterson and explained to him that there is an overhead of $80,000 and
3497 nothing has been done by this Code. Mr. Peterson said to me, "We are going to get an indictment and convict the Schechters, and that will be a whip over it." We told him at that time "as long as you do something to try and see that the industry is brought out of the present condition."

Q. And that is what he said he would accomplish for the industry, to get a conviction of the Schechters? A. That is right.

Q. Now, were you ever present at any meeting when Mr. Forsmith presided, about four
3498 weeks ago? A. I was not present. It happened to be in the back office of mine, and I walked in there and I listened to the conference.

Q. Do you remember Mr. Forsmith saying that he and Mr. Peterson are the only ones that are getting the benefit out of the Code?

Mr. Rice: I object to that, your Honor.

The Court: Sustained. Ask him what he said.

Mr. Rice: I have a further objection. This was one of the questions asked by Mr. Heller on cross examination of Mr. Forsmith. That, of course, is an immaterial issue and it is well-established

that he cannot contradict a Government witness on an immaterial issue.

The Court: If he is claiming persecution, that is different from credibility. If he claims that the authority, that is, those that represented the Code, that they are persecuting, that is different than discrediting. If he can show on that ground, then he has a right to show. You cannot contradict a question that you ask on cross examination, generally, because you are concluded by the answer, but I assume 3500
here that he is attempting to show that Mr. Forsmith is entering into it from a different way, not to attack his credibility, but to attack his actions.

Q. Was such a statement made? A. I happened to walk in in the middle of that meeting that they held, and there must have been about twelve or fifteen merchants in there, and I have asked Mr. Forsmith, I said, "Abe, what have you done so far for the industry? You originated that Code, and you are in the Code, and 3501
you are just ruining us," and he said, "Louis, I know it. The only benefit so far that is got out of this industry is myself and Mr. Peterson."

Cross examination by Mr. Rice:

Q. As a matter of fact isn't this what Benjamin Forsmith said, that he wanted the Code to benefit the entire industry and not just benefit Mr. Peterson and himself? A. I don't know if he is trying——

Q. Isn't that what he said? A. He didn't say that, no, sir.

3502 Q. Didn't say that? A. No, sir.

Q. Didn't he say that in substance? A. No, sir.

Q. At this meeting, Mr. Spatz, where you said Benjamin Forsmith made the statement was anybody else present? A. Yes.

Q. Do you see anybody in the courtroom that was present there? Do you see Mr. Winkle over here? A. Yes, sir.

Mr. Rice: Will you stand up, Mr. Winkle?

3503 (Mr. Winkle stands.)

Q. Do you see Mr. Al Winkle? A. Yes, I see Al Winkle there.

Q. He was present there? A. I do not remember.

Q. You do not remember? A. No, whether he was.

Q. You stated on direct examination that Mr. Leroy Peterson said that he was going to make an example of the Schechter brothers, is that what you meant? A. That is right.

3504 Q. When did this conference take place? A. It took place, I won't be exact as to the day, but it must have been around three or four months ago.

Q. It was some time after July 26, 1934? A. Well, I couldn't say the date, the day.

Q. Did you remember when the Schechters were indicted by the grand jury? A. I do not. If you will tell me the date I will know.

Q. That was July 26th. A. All right.

Q. It was after the indictment? A. It must have been prior to that.

Q. Wasn't it after the indictment? A. I do not think so.

3505

Q. Wasn't it about two weeks after the indictment?

Mr. Joseph Heller: He said before, counsel is suggesting after.

The Witness: It has been after the indictmetnt too.

Q. It was after the indictment? A. That statement was prior to the indictment; there was another statement made after the indictment.

3506

Q. What was it Mr. Leroy Peterson said?

The Court: Which time?

Q. At the time after the indictment, is that the time you are testifying to? A. I have been testifying before the indictment.

Q. All right, what was it Mr. Peterson said on that occasion before the indictment? A. That we got to get somebody to set an example in the industry for enforcement of this Code. He says we are building up a fine case against the Schechter brothers.

3507

Q. Did he tell you the Schechter brothers were the worst violators in the industry? A. No, he hasn't.

Q. He didn't tell you anything of that sort? A. No, sir.

Q. As a matter of fact didn't you ask Mr. Peterson what he was doing to enforce the Code? A. That is right.

Q. You asked him that? A. I asked him.

Q. And he answered your question? A. He did.

Q. And his answer is, "We are preparing a case against the Schechter brothers"? A. That is right.

3508 Q. Is that right? A. That is correct.

Q. After the indictment you said you had another conversation with Peterson about this? A. That is right.

Q. What was that conversation? A. The conversation was taken, we had a meeting, an executive meeting of the commission merchants' association in Mr. Werner's office prior to the holidays. We asked Mr. Peterson that this industry is being ruined and destroyed——

Q. That the Code wasn't being enforced? A.
3509 Do you want me to answer it my way?

The Court: Better let him go ahead and answer it.

Q. Very well, go on with your answer. A. We told Mr. Peterson at that time if it goes on that way we are going into bankruptcy, the entire industry is. Then Mr. Peterson said, "Just have a little patience, after we get the conviction on the Schechters we will set a new business."

Q. You were complaining that the Code wasn't being enforced? A. Not that it was being en-
3510 forced, we were complaining that the Code was losing us money.

Q. Were you complaining that the Code was not being lived up to by everybody? A. No, sir.

Q. Some people were not living up to the Code? A. No.

Q. Didn't you express impatience that there weren't prosecutions of violators? A. I beg pardon?

Q. You do not understand that? A. Repeat it and I will see if I can.

3511

(Question repeated by stenographer as follows: "Q. Didn't you express impatience that there weren't prosecutions of violators?")

A. No, we expressed that the entire industry is not living up to the Code.

Q. That is what you expressed? A. That is right.

Q. And you thought that the Code ought to have been enforced? A. No, I felt the Code ought to be thrown out.

3512

Q. But if there was a Code you thought that it ought to be enforced? A. No, I thought in the beginning that the Code would not work, from my past experience I knew the Code would not work.

Q. You are against the Code, aren't you? A. Certainly.

Q. You would like to have the Code overthrown? A. Positively.

Q. This Code applies chiefly to the slaughter house men, does it not? A. This Code applies to the industry and the entire industry has been in bankruptcy since this Code has come in.

3513

Q. Most of the provisions apply to the slaughter house men? A. Most of them are, yes.

Q. You would like to have the Code thrown over? A. That is right.

Q. That is why you are here testifying? A. Only as far as labor are concerned, I beg your pardon. That is not why I am here to testify. I would like to see the practical experience of this Code, which is physically impossible to enforce, to be thrown out and just a labor Code provision left in it.

Q. Isn't it true that you and other commission men urged the slaughter house men not to pay

3514 their assessments so that you could break the Code Authority? A. No, sir.

Q. Isn't that true? A. No, sir.

Q. Isn't it true that for weeks you have been trying to get the slaughter house men not to pay their assessments to the Code Authority? A. No, sir, we have right now——

Q. Just answer yes or no. A. I say no.

Q. Isn't that true? A. I will answer it my way, if you will let me.

Q. Answer it yes or no. A. No.

3515 Q. You had a third conference with Mr. Leroy Peterson, did you not? A. When was that?

Q. Just a few days ago or a few weeks ago. A. (No answer.)

Q. This is Mr. Peterson sitting here (indicating). A. Sure.

Q. You had a conference with him a week ago last Tuesday, did you not? A. Where at?

Q. You and three other commission men. A. At his office? Yes.

Q. Was it at the Code Authority office? A. That is right.

3516 Q. Isn't that true, that you and three other commission men—— A. Two other, I believe, it was.

Q. Two others? A. Two others.

Q. Isn't it true that you commission men visited Mr. Peterson and asked him to drop the prosecution against the Schechters, isn't that true? Yes or no? A. Yes.

Q. That is true? A. That is true, yes, sir.

Q. And isn't it true that you told Mr. Peterson that the Schechters were customers of the commission men? A. No, sir.

Q. Aren't they customers of the commission men? A. Sure they are.

Q. You claim to be an expert on the practices in the live poultry industry? A. No, sir.

Q. You are not an expert? A. Just an expert to the Acme Commission Company, to myself.

Q. But you do not claim to be an expert? A. No.

Q. On the competitive practices in the live poultry industry? A. I would want to get paid, if I was an expert.

Q. Just answer yes or no. A. No.

Q. Do you claim to be such an expert? A. 3518
No expert.

Q. You are not an expert? A. I am experienced, but not an expert.

Q. You are not an expert on the effect of competitive conditions upon the prices of live poultry? A. I am experienced——

Q. Are you an expert? A. I am experienced in that, not an expert.

Q. You are not an expert? A. I am not an expert about anything.

Q. You have not studied agricultural economics? A. No, sir.

Q. Or any sort of economics? A. No, sir. 3519

Q. What is your education? A. None; very little.

Q. None at all? A. Very little.

Q. You weren't here the other day when Mr. Termohlen testified? A. No, sir.

Q. You would not match your wits on economic subjects——

Mr. Joseph Heller: We are not matching any wits here. I object to that, your Honor.

The Court: I do not believe that his expertness depends on his own claims.

3520 His modesty may prevent him from claiming such.

Q. You have not studied economics at all? A. No, sir.

Q. And you would not endeavor to explain economic consequences of competitive practices? A. In my business I am the best economist.

Q. What is that? A. In my business I am the best economizer.

Q. You are the best economizer? A. Yes,
3521 without figuring.

Mr. Rice: I wish to have that word spelled in the minutes, just as he stated it.

The Witness: I do not know how to spell.

Mr. Rice: I mean just as he stated it.

Q. Mr. Spatz, you are a commission man today? A. Yes.

Q. You used to be a slaughter house man?
3522 A. Yes.

Q. Now I think you stated, Mr. Spatz, you considered yourself one of the best economizers in the industry. A. In my business.

Q. You mean an economist, don't you? A. I don't mean an economist, I mean that without education, on figuring, because where I come from there is no compulsory education, and yet I can figure in my business as good as any one of you fellows can figure with an education, so, I call myself an economizer or an economist or whatever you would like to call it.

Q. Now back in 1929 you were a slaughter house operator, weren't you? A. Yes.

Q. And you and 68 others—— A. 91.

Q. I am not talking about the indictment. A. All right.

Q. And you and 68 others were convicted as co-conspirators for violating the Sherman Anti-trust Act? A. That's right.

Q. And you received a jail sentence? A. That's right, four weeks and $1,000 fine.

Q. And you served the jail sentence? A. Yes.

Q. And that was because of your activity in the live poultry industry in New York? A. No, sir. 3524

Mr. Joseph Heller: If your Honor please, he cannot go any farther. He asked him whether he was convicted and he said yes.

The Court: Yes, you asked him if he was convicted of a crime and he said yes, and that's all.

Mr. Rice: That is all.

Redirect examination by Mr. Heller:

Q. Now you said you were president of the Acme Commission Company? A. Yes. 3525

Q. Now you paid your assessment promptly? A. I am paying them promptly but I am holding back three weeks so that any time it breaks up I will have that much advantage.

Q. You paid your assessments in the industry? A. Approximately $5,000 directly and indirectly God knows.

Q. So from May 16th to date you have paid $5,000? A. No, approximately it would cost me over $5,000 a year directly and indirectly God knows.

Q. Your testimony was not from book experience, was it? A. I have none.

Q. It was from your actual manual labor and your observations? A. That's right.

Q. From your experience in this business? A. I started on the bottom from 1912 and I am on the top right now.

ALBERT GARLICK, called as a witness on
3527 behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. Joseph Heller:

Q. Mr. Garlick, are you a commission merchant? A. Yes, sir.

Q. Have been for how long? A. About eleven years.

Q. Were you in any other business before that? A. Always in the live poultry business.

Q. How long have you been in the live poultry business? A. Close on to thirty-four years.

3528 Q. Thirty-four years? A. Since I was a boy, a little boy thirteen years old.

Q. That is your experience in the live poultry business? A. Yes, sir.

Q. For thirty-four years? A. Yes, sir.

Q. What branches of it? A. In New York City, every branch of it.

Q. And by "every branch" what do you mean? A. Well, when I was on the east side with my father we sold poultry retail, we sold it to the butchers, in fact, we sold it to hotels, restaurants and direct to the consumer.

Q. How long have you been a commission merchant? A. Eleven years.

3529

Q. And at what address? A. At West Washington Market.

Q. Were you ever a slaughter house man? A. Slaugther house man about—it must be sixteen or seventeen years ago, but I was a jobber in between in West Washington Market.

Q. You have had extended experience in the live poultry business? A. Yes, sir.

Q. Have you had experience in the live poultry business in any other city besides the City of New York? A. No.

3530

Q. Your experience is limited to the City of New York? A. The Greater City of New York.

Q. Do you know the other poultry centers? A. Yes, sir.

Q. Have you ever been there? A. Yes.

Q. Then you have visited other poultry centers? A. All poultry centers.

Q. What are they? A. Well, I have traveled all through Maine, New England, all through New England, the South, the West, the Far West, wherever poultry is raised; I receive poultry from those sections from time to time.

3531

Q. You are familiar with every phase of the poultry industry? A. I think——

Q. You think you are? A. I think I am.

Q. And your experience is not book experience, is it? A. No, from hard knocks.

Q. Hard knocks? A. Yes.

Q. Do you know each of the Schechters sitting at the table? A. No.

Q. Which one do you know? A. I know the oldest one, Joe.

Q. Joseph Schechter. How long have you known him? A. Not very long.

Q. For how long? A. Intimately about a year.

3532 Q. Has he been purchasing poultry from you? A. He has.

Q. Have you heard his reputation discussed among the merchants? A. No, it is just from my own experience with him. I do not discuss my business with other merchants.

Q. What is your experience with him? A. He has always lived up to everything that was expected of him.

Q. You consider him an honorable man? A. I do.

3533 Q. You consider him an honest man? A. I do.

Mr. Rice: Your Honor, this is not the correct way of proving his reputation.

The Court: He is not testifying as a character witness; he says he never discussed him with anybody else; he couldn't even be a negative character witness.

Q. Have you ever heard anything said bad about him? A. Not to my knowledge.

Q. Now, will you describe the industry?

3534 Mr. Rice: Just a moment. I move to strike that out unless we first have some preliminary evidence to show that he has discussed Joe Schechter with plenty of other people.

The Court: He says he has not with anybody, and I suggested to you that he could not even be a negative character witness.

Q. Do you know his reputation?

The Court: No, you asked whether he discussed it with anybody and he said he had not.

3535

Q. Did you ever talk to any merchants about Mr. Schechter? A. The only way I would is when this case come up, as we meet in the restaurant or in the street, we would hear a lot of hearsay, you know, and I would be naturally interested to see what was going on, but as to my personal dealings with him, it has just been between the two of us. I have never asked anybody about his credits.

Q. And you found him to be—— A. I have found him personally to be O. K.

3536

Mr. Rice: I object.

Mr. Heller: Talking about his personal transactions.

The Court: He has already gone over that without objection.

Mr. Heller: All right.

Q. Have you bought poultry from other States? A. I have.

Q. Do you buy them every day of the week? A. No, I receive my consignments every day in the week.

3537

Q. You sell poultry on consignment? A. Yes.

Q. Do you know of a condition existing in the City of New York such as this city being characterized as the dumping ground for diseased chickens? A. No.

Q. Have you ever heard of such a thing? A. I have heard it and read it in the newspapers.

Q. Since this case has come up? A. Since this case has come up and other cases, I am sorry to state, and it has practically ruined the reputation of our business.

Q. Is there a market in the City of New York for diseased chickens? A. No, sir.

Q. What percentage of poultry do you sell that comes into New York City? A. What percentage? That I do not know.

Q. Approximately. A. But I handle approximately, some weeks six; I will jump to eight; I will jump to ten; I will jump to twelve, and sometimes fifteen, and sometimes fall down to four cars. I have never figured up what I handled during the year.

Q. Do you know how prices are fixed in the City of New York? A. Prices are not fixed.

3539 Q. Do you know how they are ascertained? A. Yes.

Q. How are they? A. Supply and demand and with buyers at the railroad terminals.

Q. That is the sole factor in determining price in New York? A. Supply and demand goes a long way.

Q. No question about that? A. No question about that.

Q. Will the fact that Mr. Schechter pays a person less than fifty cents per hour affect the price structure in so far as the commission merchants are concerned? A. No.

3540 Q. Do you know what quality of poultry comes into the City of New York? A. Well, from my experience, and from what I know, how my competitors work, we all aim to solicit the best poultry available at the time, at the season.

Q. Does that quality of poultry vary? A. All the time.

Q. When does it vary? A. We have seasons in the year where poultry that is in demand now, in the spring or in the summer would not be in demand, and vice versa.

Q. Will you describe the poultry as it is named in the market? A. Yes; we have what we call

the best poultry, comes this time from Ohio, Illinois and Indiana; we might get a car from Iowa, we might get a car from Missouri, to come up to that standard. That is considered the best poultry, graded as Indiana, in bulk, in carload lots. Then we have what we call the fancy western. A car might come out of also Missouri, Iowa or Nebraska. Then we will have an average western, that is not so good, but the farmer has not been so particular in culling out his flocks. You see, he has been negligent on his part and 3542
he will let his stuff go as straight country run. That is shipped in. That doesn't bring as much as an Indiana car poultry of that day's sale on the arrival of the car.

Q. Can you tell us what factors make up the poundage of poultry that comes in day by day in the City of New York from other States? A. There are certain shippers that ship practically fifty-two weeks of the year. That poultry is delivered to their door in little Ford cars or Chevrolets, small ones and large ones, all the way up to big Mack trucks. Then they are taken
off the farm and they are delivered through the 3543
countryside, for hundreds of miles, in open trucks, to a standing loading section, where they will load them onto a car, a carload of poultry. That poultry is liable to catch cold and by putting it into the car it will come to New York and you will find here and there some chickens that are sick, and a great many maybe that have got a cold, and when it is unloaded here we have the United States Government Inspection here that looks at that poultry, and once it passes through my hands it is sold, and I have a Government Inspection ticket that says it is all right.

3344 Q. Now, is there a market in New York for diseased poultry? A. I never found it yet; not to my knowledge.

Q. And your knowledge extends for a good many years? A. As long as any man in the commission business.

Q. And is there a particular market in the City of New York for culls? A. Not that I know of.

Q. What grade of chickens comes in at any particular time and what determines what grade comes into the City of New York? A. The sec-

3345 tions will differ from other sections; some sections produce better qualities than others.

Q. Is there anything else that would determine as to the grade of chicken that comes into the City of New York? A. No.

Q. There is no question about that? A. No.

Q. The sole factor then, as you say, is the output by the different farmers? A. Yes.

Q. And the demand for it in the City of New York? A. Yes; it is all sold as is at the railroad terminals. A man sees what he buys and he buys it subject to the Government inspection.

3346 Q. Now, does the fact or can a fact such as the permission given by a slaughter house man to select his chickens affect the grade and quality of the chickens that come in regularly from day to day? A. No.

Q. There is a steady demand for poultry in the City of New York? A. Yes.

Q. And it would come in in any event? A. Rain or shine, they come in. It makes no difference. Poultry moves to New York all the time; the only thing that would shut it off maybe would be if the price happened to be lower, that is, drastically lower, four or five cents, and then the

shipper would look and see that it would cost too much to ship it in, and it would stop automatically.

Q. They would not ship at all? A. No.

Q. Has the slaughter house then anything to do with the fixing of prices down at the West Washington Market? A. There is no price fixing. They agree on the price that you are willing to pay, and if they are too low, we think the stuff is worth money we do not sell it to them.

Q. That is the only thing that determines the price? A. That is all, supply and demand. 3548

Q. And would a fact such as this change the price that you might get for your poultry, suppose Schechter gives away his poultry for nothing, would that affect your price? A. No.

Q. You would still get your price? A. If he was to create a demand, all of them would give it away, that would create such a demand for it that the price would automatically go up.

Q. It would go up and not down, is that it? A. Yes, sir.

Q. No question about that from your personal experience? A. Yes, positive. 3549

Q. Definite and certain? A. If they pay us 15 cents for poultry and went home and sold it for 14 or 13 they would clean up the market so fast that the next day they would be putting up the price on themselves, and the price would go up in the country.

Q. Do you know from your knowledge who consumes live poultry in the City of New York? A. Well, the Jews, Italians, Gentiles have come in a little bit, but a very, very small percentage.

Q. Can you tell the jury with any degree of certainty as to what caused the drop of consumption in chickens in the City of New York? A.

Well, as I said before our business got the wrong kind of publicity. We are known, we are looked upon as the worst type of business men in the world, and have been prosecuted and persecuted for years, and the public is against us.

On the other hand we have got an economic condition today, the depression, and our mothers, the old-fashioned mother spent more time in the kitchen than the young women do today. That is another angle to it.

3551 Q. What do they do? A. They go down and buy canned goods.

Q. They eat in restaurants? A. They go and buy canned goods, and when the husband comes home they have makeshift meals. They go out and buy a steak or chops. They do not spend as much time in the kitchen as our mothers did, we know that for a fact. We have had the wrong kind of publicity in the last few years besides.

Q. Do you know anything about the dressed poultry industry? A. Yes, a little, not as an expert, just hearsay.

3552 Q. Do you know whether the Jewish trade are now consuming more dressed poultry than live poultry? A. Well, the younger element here and there might switch to it, yes, they are getting away from the religious part of the question. And then they get a cleaner product, you see.

Q. It is all cleaned? A. Cleaned and picked, and at times of the year it is cheaper, and it is handled cleaner.

Q. It costs less to buy dressed poultry than live chickens? A. That varies with the seasons or the times of the year. At certain times you will find the dressed line is out of line with the live poultry line, sometimes our market is out of

line with the dressed line, but after we go along for a week or so we come closer together.

Q. Do you sell Schechter brothers any poultry? A. Yes, we sell them. We like to sell them. The trouble is, they don't care to buy.

Q. Do you sell them any diseased poultry? A. My poultry is all Government-inspected. How can I sell them diseased poultry.

Q. Is there any such thing as diseased poultry in the market? A. No.

Q. Do you sell them the rottenest poultry you have? A. I have the name of handling good 3554 poultry.

Q. Then they buy good poultry from you? A. They buy good poultry from me.

Q. The highest quality? A. The best prices. You know, the prices, they don't always want to buy at top prices, because they are shrewd buyers, they understand the business, but they look for the best,——

Q. Want the lowest price? A. (Continuing.) —merchandise they can get for the least price.

Q. And you do not call a man a chiseler if he does that? A. No. 3555

Q. Did you ever hear Mr. Forsmith call Mr. Schechter a chiseler? A. No.

Q. You did not hear that? A. No.

Q. You were not here when he testified? A. No, I just came in here about an hour and a half ago.

Q. Did Mr. Forsmith ever buy from you? A. Occasionally.

Q. Does he still buy? A. No.

Q. When was the last time he purchased? A. I don't know.

Mr. Rice: If your Honor please, this is obviously immaterial.

3556 *Albert Garlick—By Defts.—Direct*

Mr. Heller: I will show you in the morning how material it is, tomorrow morning.

The Court: He may ask him if Mr. Forsmith bought from him.

Q. Do you know whether the grade or quality of poultry has changed in the last few years, that is, coming to the City of New York? A. Well, in my experience in the last year or two, I would give the main reason as this little trouble they
3557 had out west during this hot spell, the drought, the farmers haven't got enough feed to feed them with, you know, like they did in former years, when they had plenty of grain to feed poultry. Some of these farmers haven't got enough to feed themselves, let alone feed poultry. They leave them go out and shift for themselves. That is my experience. I just came back from the west ten days ago.

Q. You found that to exist? A. Yes.

Q. Does that fact sometimes account for the poorer grades of poultry that come in? A. It
3558 will. Feed is the main thing that will uphold the quality.

Q. That would not make all the poultry diseased? A. No, just poor.

Q. For the poor quality you get less money? A. Yes.

Q. People do not die from eating that kind of poultry? A. No.

Q. And you can eat it and live without being sick? A. Yes, we eat it in the finest hotels and you don't know the difference. This is something that grows, it is not manufactured.

Q. You people do not grade your chickens as they come into the City of New York? A. We sell them as they come in.

3559

Q. Now, if the Schechters came down on any certain date, they look at the stock after they have been inspected?

Mr. Rice: I object to any particular course of practice on the part of the Schechters. Let us have the day and occasion designated.

Q. Take every day that they have come down during the last two months.

3560

Mr. Rice: I object unless the specified date is designated.

The Court: Oh, he can ask him whether on any day in the last two months they bought any bad chickens.

Q. Have they bought any bad chickens? A. I cannot sell them any bad chickens because I haven't any, and I never heard them ask for them.

Mr. Joseph Heller: That is all.

3561

Cross examination by Mr. Rice:

Q. Now, you don't want this poultry industry to have the reputation for selling unfit poultry, do you? A. No.

Q. And you don't want the reputation for selling unfit poultry, do you? A. No.

Q. It is bad for your business? A. Yes.

Q. And it affects your pocketbook? A. It affect the industry at large.

Q. You are not an economist? A. No.

Q. Have you ever studied any agricultural economics? A. No.

Q. Or any other economics? A. No.

Q. What is your education? A. Public school; I went to work at thirteen.

Q. Now, you have said this industry has had a lot of bad publicity? A. In the years gone by, yes.

Q. And there have been a lot of bad practices in this industry? A. Not very bad.

Q. A lot of evil competitive practices? A. It has just been enlarged and magnified to the public.

3563 Q. It has had a bad reputation? A. It was given a bad reputation.

Q. And the consumption of live poultry has suffered as a result? A. Not alone from that, but somewhat.

Q. Well, partially from the bad reputation? A. Not entirely.

Q. Don't you know that the Live Poultry Code Authority is designed to improve the industry? A. Yes, I was told that.

Q. You are against the Code? A. I am not in favor of it.

Q. You are against it, aren't you? A. I am.

3564 Mr. Rice: That is all.

(Witness excused.)

The Court: We will take a recess.

Gentlemen of the Jury, do not discuss this case among yourselves or allow anyone to discuss it with you, and keep your minds open until the whole matter has been presented to you, and return here tomorrow morning at ten o'clock.

Adjourned to Friday, October 26, 1934, at 10 A. M.

Brooklyn, N. Y. October 26, 1934.

Met pursuant to adjournment at 10:00 a. m.; present as before.

HERMAN SOLON, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. Heller: 3566

Q. What is your full name? A. Herman Solon.

Q. And what is your occupation, please? A. Bookkeeper.

Q. For what concern? A. The Chelsea Live Poultry Company, Inc.

Q. And what are your duties with this concern as bookkeeper? A. Why, to do the books.

Q. Entering accounts? A. Making out bills, entering payments and closing the books.

Q. Do you know a person by the name of Benjamin Forsmith? A. I do.

Q. Is he in court? A. I do. 3567

Q. Is he in court? A. He is right there (indicating).

Q. Is that the gentleman (indicating Mr. Forsmith a previous witness)? A. Yes, sir, that is him.

Q. Now have you any records of the Chelsea Company that you work for, showing the account of Benjamin Forsmith?

Mr. Rice: If your Honor pleases, it appears from counsel's preliminary questions that he is entering upon an attempt to impeach Mr. Forsmith's credibility.

The Court: No, he is not; Forsmith occupies a Government position and he is

3568 attempting to show that that man is engaged in business as a competitor.

Mr. Heller: Not only that, your Honor, but also——

The Court: Just a minute, if it was anybody else there is no doubt about it, he would be bound by it, but if he contends that this man was engaged in this line of business he can show it then. As a chief investigator he would have a right to show that. That would not be compatible per-

3569 haps with his position, I really don't know.

Mr. Heller: I have something else in mind, your Honor.

The Court: Now yesterday, Mr. Heller, you asked him if he made a certain statement to somebody as to who was being benefited, and that was purely for impeachment. I thought you intended to follow it up but you did not. Now this is different, this is an attempt to show something that would be bias and prejudice, altogether different than impeaching testimony.

3570 Q. Now what does your account show? A. I have a copy here of the merchandise sold Mr. Benjamin Forsmith from May 14th to July 27th.

Q. Is that charged to the account of Benjamin Forsmith? A. Yes.

Q. And do you know whether he personally paid for that merchandise? A. Yes, with his personal check.

Q. And do you know approximately how much he bought during that period of time? A. $3,475.07.

Mr. Heller: That is all.

Mr. Rice: No questions.

(Witness excused.)

GEORGE LEVIN, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. Heller:

Q. Are you engaged in any business, Mr. Levin? A. I am engaged in the live poultry business, commission merchant.

Q. Where is your office, Mr. Levin, your place of business? A. On Bloomfield Street, at West Washington Market. 3572

Q. How long have you been engaged in that business? A. I am engaged in the commission business you mean?

Q. Yes. A. 15 years.

Q. Were you engaged in the live poultry industry prior to that time? A. About 22 years altogether.

Q. Will you tell us what experiences you have had as a commission merchant? A. Well, as a commission merchant——

Q. And in any other capacity pertaining to the live poultry industry. A. When I first came into 3573
that industry about 22 years ago I worked for B. Baff & Sons as weigher, and I worked for them for about 5 years. Then I went in the employ of Flick & Hillman, and I worked for them about 3 years as a salesman, in charge of all unloading. Then I went in business for myself, and in that capacity I have been for 15 years, I have been secretary of the concern and salesman.

Q. What do you do for the concern? A. What do I do?

Q. Yes. A. I sell poultry, I take charge of credits, help solicit poultry.

Q. Have you ever been at any other market besides West Washington Market? A. Yes, sir.

3574 Q. Which ones please? A. I have been on the Philadelphia market, I have been on the Boston market, I have been on the Baltimore market, on the Chicago market, St. Louis market, Kansas City market.

Q. How often have you visited those markets? A. How often have I visited them?

Q. Yes, about how many times a year do you go there? A. I do not go there very much, I go out there sometimes during the conventions, once a year and go out at different points maybe once in
3575 two or three years. I do not travel much, my partner does all the traveling.

Q. Have you at any time discussed the marketing conditions with people engaged in that industry? A. I have.

Q. At those centers? A. I have.

Q. And with people in the industry in the City of New York? A. With the people——

Q. In the City of New York? A. I have.

Q. Merchants of the same calibre? A. I have.

Q. About how much poultry do you get in approximately by the year? A. By the year, well
3576 I would safely say in the year of 1933 I handled right close to 1,000 cars of poultry by freight. I would safely say about another 150 cars by express.

Q. Do you know the value of that merchandise? A. In dollars and cents?

Q. Yes. A. Well, from the statement I received from my accountant which showed I done approximately close to $3,000,000 worth of business.

Q. During the last year? A. That is the year 1933.

Q. Can you approximate the percentage of all the business you do in comparison with what comes into the City of New York in the live poultry industry? A. Well, I couldn't give it to you on a percentage basis, but I handle on an average of 12, 14, 15, 17, 18 cars a week; it just depends on how my receipts come in; some weeks I am heavy, some weeks I am light.

Q. You are considered as one of the big commission merchants in the City of New York? A. I am considered one of the largest. 3578

Q. Do you know the Schechter brothers sitting at the table? A. I do.

Q. How long have you known them? A. I have known them about four or five years.

Q. Do you know other merchants that know them? A. I believe I do.

Q. Have you had any occasion to talk with other merchants about the Schechters? A. We have, we have just consulted.

Q. Have you observed them from time to time? A. Observed who?

Q. The Schechters. A. I have.

Q. Have you at any time seen Alexander Schechter buy merchandise during the month of June? A. Which is Alexander, Alec? 3579

Mr. Heller: Stand up.

(Defendant Alexander Schechter stands up.)

A. Yes, sir.

Q. He was a buyer? A. Yes, sir.

Q. You saw him frequently there? A. Yes, sir.

Q. In the morning? A. Yes, sir.

Q. Do you know whether it was pretty near every day? A. Well, I wouldn't say every day but I have seen him three or four times a week on the railroad and in the market.

3580 Q. Do you know the general reputation in the community with reference to these defendants in the following manner: Do you know whether they are reputed to be peaceable citizens? A. Positively are.

Q. Do you know whether their reputation is that they are quiet? A. Very quiet.

Q. Gentle? A. Very gentle.

Q. Do you know whether their reputation is that of law-abiding citizens? A. They are positively.

3581 Q. Do you know their reputation, what their reputation is for honesty in business? A. Very honest.

Q. Have you had any trouble in collecting your bills? A. I have never had any trouble.

Q. Is their credit standing good with you?

Mr. Rice: I object to that, that isn't proper on reputation.

Mr. Heller: I will withdraw it.

Q. Have you ever heard anything bad about them? A. I positively have not.

3582 Q. Will you tell us what particular knowledge you have of the poultry business? A. Well, my knowledge of the poultry business since the day I came into the business, I worked for B. Baff & Sons, I went to slaughter houses, charged poultry, I have unloaded poultry, sold poultry, delivered poultry, help unload poultry, handled poultry with manual labor, loaded cars of poultry up in the mountains and at the seashore, sold it direct to the trade and to hotels, sold poultry here in the City of New York to the slaughter houses and retailers.

Q. Did you observe, have you observed daily that cars of poultry that come into the City of New York? A. I have.

Q. Do you know where the poultry comes from? A. All the poultry comes from?

Q. During the year. A. Oh, sure.

Q. Where? A. Poultry comes from the States of Indiana, Ohio, Illinois, Missouri, North and South Dakota, Wisconsin, Tennessee, Kentucky, Texas, Arkansas, Nebraska, as far back as Colorado.

3584

Q. Can you describe the kind of poultry that comes into the City of New York by grade? A. By grade, why we have a grade that comes from Indiana and Ohio and certain parts of Illinois that is considered the finest grade of poultry that comes into the City of New York, we call that black land poultry. Then we have poultry that comes from the northern part of Missouri which is considered as good a grade as Indiana and Ohio. Then we have poultry from the southern part of Missouri that is not quite as good in quality. We have poultry that comes from Arkansas and Kansas which I would call also poultry not as good as the Indiana grades, but average poultry. We have poultry that comes from Tennessee and Alabama and Georgia, and Texas which is a lighter grade poultry.

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Q. During your experience have you had an opportunity to examine trade reports? A. I do not quite get your question.

Q. Are there such things as trade reports in your industry? A. Trade reports?

Q. Yes, Urner-Barry, Urner-Barry Publishing Company? A. Oh, yes, sir.

Q. Any other reports? A. That is the only reports we get.

Q. You have examined those? A. Yes.

Q. As long as you have been in business? A. Yes, sir.

Q. You are familiar with them? A. Yes, sir.

Q. Have you ever seen any Government reports pertaining to this industry? A. Government reports?

Q. Yes. A. I have.

Q. Do you know whether New York City is a dumping ground for diseased poultry? A. Positively no diseased poultry is sold in New York City.

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Q. Do you know whether the City of New York is a dumping ground for culls? A. There is no such things as culls sold in New York City.

Q. What is the operation that takes place when poultry comes into the City of New York? A. When a car of poultry comes into the City of New York it is offered for sale. Before it can be offered for sale it has got to be inspected by the United States Government Inspectors or veterinarians who are in charge of the Inspection Bureau. You give them the card, you

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mark the car number down, the place on the platform where it is located. They go in and inspect that car of poultry. Before they go in they look at the car of poultry from the outside to determine its health. Then they go inside the car, inspect it as to weight, the weight of the crop, and anything unfit for human consumption is destroyed, thrown into a barrel, and disinfectant poured over it.

Q. What happens to the poultry after that? A. The poultry is sold to the buyer, and retail and wholesale slaughter houses, put in crates and Government labels placarded on each coop.

Q. Do the merchants, wholesale slaughter house men, select their poultry on the piers or at the market? A. Well, they go over to the railroad and they buy their poultry from any car that they like, and that is how they select their poultry.

Q. By crates? A. By crates.

Q. They select the individual chickens from the crates? A. Oh, no, sir. It would take all year to get a car out.

Q. They take them on their trucks thereafter? 3590
A. They take them on their trucks and sometimes they use the New York Live Poultry Trucking Company's trucks.

Q. That is how it is delivered to their place of business? A. That is how it is delivered to their place of business.

Q. You have heard of the term straight killing? A. I have.

Q. Will you explain what you mean by that? A. Well, my definition of a straight killing would be a crate of poultry that is unloaded from a car, that is unloaded—that is loaded onto the slaughter house man's truck, delivered to his 3591
place, and when the buyer comes in he must take that coop of poultry straight as it is delivered to him.

Q. Will you describe the grades of poultry? A. The grades of poultry?

Q. Yes. A. Coming to New York?

Q. Yes. A. There is a grade called a Fancy Indiana, there is a grade called the Fancy Western, there is a grade called the Western, there is a grade called Average, Medium and Poor.

Q. Can you find these various qualities of poultry mixed up in one of the coops that are sold to a market man? A. Oh, certainly. You find all sizes in a crate.

3592 Q. Would those grades of poultry be fit for human consumption? A. Positively.

Q. How about the poor grade? A. The poor grade of fowl? The poor grade of fowl is fit for human consumption. It is only thin-breasted fowl, crooked-breasted fowl.

Q. And do you know whether that kind of a fowl is cheaper than a high, fancy grade fowl? A. Positively.

Q. Is that the only difference? A. That is the only difference.

3593 Q. Do you know whether a practice exists at this time, or has existed for the last few months, of loading poultry and sending in poultry to the City of New York which have gravel or are infected or constipated poultry? A. Which has gravel?

Q. Yes. A. Positively not. It could not be passed by the Government inspection; it would be turned down.

Q. How long a time does this condition not exist? A. Why, this condition don't exist—this condition was—don't exist since the time that

3594 Dr. Ives took over the inspection. I believe it is about ten or eleven years; I am not sure. I am not quite certain of the number of years.

Q. Do you know how the market price for the live poultry industry is determined in the City of New York? A. I do.

Q. Will you explain it? A. Well, the first thing is supply and demand, the second thing, the buyer, they are selling together and they bargain for price; the Urner Barry Publishing Company reporter is there, and if he sees he has enough sales to quote price, why, he quotes it.

Q. Does he quote a top and a low price? A. He does.

Q. What does that mean? A. Well, that means that there is different grades of poultry, as explained before, there is fancy poultry, poultry that is quoted higher; there is fancy Western poultry that is quoted a cent less, there is Western car poultry that is quoted still a cent less than that, and there is the average grade poultry, and there is a poor grade of poultry.

Q. Is it possible that even for one particular grade of poultry the price may vary? A. I have seen the fancy grades of poultry in the morning sell for the top market price, and two hours later selling for one and two and two and a half cents less. 3596

Q. Who consumes live poultry in the City of New York, do you know? A. Who consumes?

Q. Yes. A. Most of the poultry consumed in New York City is consumed by the Italian and Jewish trade, the Orthodox trade.

Q. Can you ascribe the reason for the falling off of the consumption of live poultry in the City of New York? A. Well, I believe it is due to the depression; public has not got the money, second thing, I believe,—third, I believe the young Jewish element is going to dressed poultry, not observing the Orthodox laws, and, fourth, I believe that most of the people who consume this poultry, that is, the poorer class of people, are on relief, and they cannot afford to buy a chicken. 3597

Q. Have you ever heard whether or not there exists a list price for culls as such in the City of New York? A. There is no culls sold in the City of New York.

3598 Q. Have you ever heard of a list price for diseased poultry in the City of New York? A. I have not.—

Q. Does such a thing exist? A. No, sir.

Q. Do you know of your own knowledge whether or not there has been a drop in consumption of other food products? A. There has been.

Q. How do you know that? A. Well, I have happened to be—my brother happens to be a large fruit and produce merchant out in Hartford; I keep in touch with him quite often, go out to see him, and he tells me his business is in terrible shape.

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Mr. Rice: I object——

The Court: Strike out what his brother told him.

Q. Have you spoken to other merchants? A. Yes, I have spoken to people in the butter and egg line, dressed poultry line——

Mr. Rice: If your Honor please I ob-

3600 ject to this type of expert testimony.

The Court: Yes.

Mr. Rice: As to other commodities.

The Court: That is correct. If he has studied reports and he can testify from them, all right.

Mr. Heller: This is first-hand knowledge.

The Court: But if he has talked to somebody here and there, that does not fix it. He cannot qualify as an expert because he asked one man here and there about it.

Q. About how many merchants——

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The Court: He must have made a study. A man who makes a study of the reports daily, or weekly, or monthly, that man gains some information which is general, but a man who has talked to one person here and there, that is no good. You would have to prove the different conditions of each one of them and their business. If he follows up the reports, yes, because the reports are supposed to be a general statement of conditions, but not the individual. You would have to prove the condition with each individual.

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Q. Did I understand you to say you read the Urner Barry reports? A. I have.

Q. Do they show the condition of other industries besides live poultry? A. I could not say.

Q. Show the egg industry? A. Well, it shows the egg industry.

Q. Been a drop in that? A. Been a drop in prices.

Q. Corresponding to that in chickens?

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Mr. Rice: I object to leading this witness.

The Court: Yes, let him tell us what he found.

Q. What did you find?

The Court: You studied the reports, have you, of the egg industry?

The Witness: Well, I have read the egg reports.

The Court: Do you read them regularly?

The Witness: Every time I get them in, every week.

3604 *George Levin—By Defts.—Direct*

The Court: How do they compare with your live chicken industry?

The Witness: Well, the live chicken industry is about fallen off the same as the egg industry has. In actual percentage I couldn't tell you.

The Court: I did not mean to take him away from you, but that is the way to elicit the information.

Mr. Heller: All right, Judge.

3605 Q. Do you know what determines the grade of poultry that comes into the City of New York? A. What determines it?

Q. Yes, what elements? A. I don't get that question.

Q. Do you know whether the grades of poultry that come into the City of New York vary from time to time? A. They do.

Q. Why? A. Why, because sometimes the poultry is shipped out of say Illinois or Ohio or Indiana, and it is shipped in nice weather and they come through a storm, and by the time they
3606 hit New York they look bad and they are cold and frozen.

Q. And what happens to them when they come here? A. They are sold—inspected and sold.

Q. And are they fit for human consumption? A. Positively.

Q. Now, can you compare the grade of chickens coming into the City of New York in relation to other centers? A. The grade of poultry that comes into New York is just as good in quality as any other center in the United States.

Q. There is no question about that? A. No question about it at all.

Q. Do you know whether there is a demand for inferior poultry as such, in the City of New York, for the past two years? A. Well, inferior poultry is sold in New York, anybody who has it sells it.

Q. And is there a special demand for it? A. No special demand.

Q. By inferior poultry, what do you mean by that? A. I mean poultry out of States that ship light grades of poultry. That poultry, in certain times of the year, is the finest grade of poultry.

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Q. Do you know whether the failure to slaughter chickens by straight killing would affect the price as it is gotten up? A. It would not have any effect on the price whatsoever.

Q. Do you know whether the payment of less or more wages by the slaughter house men would in any way affect the price as received in the market for your poultry? A. Positively not.

Q. Would those conditions affect in any way the price that the farmer gets for his merchandise? A. Positively not.

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Q. Would it affect the price that any particular State would get for its poultry? A. It has nothing to do with it.

Q. Would those elements affect the price that the commission man or the receiver gets? A. No effect at all.

Q. Is that correct? A. Correct.

Q. Would it affect the price of the collector? A. No effect at all.

Q. Now, the Schechters have bought poultry from you? A. They have.

Q. And they bought the same poultry that Ben Forsmith bought from you? A. They have.

3610 Q. Now, do you know what an accommodation sale or purchase is? A. I would describe an accommodation sale where a man buys poultry for two or three different slaughter houses, and when he gets his poultry he divides it up. I have accommodation sales every day in the week.

Q. Now, the person who buys the poultry, does he charge a profit? A. No, positively not.

Q. Just a bookkeeping entry? A. Just a bookkeeping entry.

3611 Q. Do you know whether you can inspect the bills of lading at the New York Central Railroad in so far as they affect other merchants? A. Can I inspect bills of lading in so far as other merchants are concerned?

Mr. Rice: If your Honor pleases——

The Court: Don't repeat the question.

Mr. Rice: If your Honor pleases, Mr. Tottis, of course, is not a Government employee, in no sense at all, and this is obviously for the purpose of impeaching

3612 Mr. Tottis. Mr. Heller has attempted to do this with another witness, and he is simply repeating it here.

The Court: I think he can ask this witness whether he could.

Mr. Rice: How is it relevant except for the purposes of impeachment, your Honor?

The Court: I think that he can ask him. I will overrule your objection.

Q. Now, have you access to all the bills of lading at the New York Central Railroad? A. I have not.

Q. Why not?

Mr. Rice: I object to that.

The Court: You can ask him if he has or not, and that is all. He cannot tell you why he cannot.

Q. Do you know whether anybody else has access? A. Nobody has access.

The Court: Now, you are not there every hour of the day, are you?

The Witness: No, but it is impossible. 3614

The Court: I say, you are not there every hour of the day, are you?

The Witness: No.

The Court: Then you don't know whether anybody else can or not. Strike it out.

Q. Are you acquainted with the I. C. C. rule——

Mr. Rice: I object to that.

The Court: He is not called as a legal expert. I let you ask him whether he 3615 could have access, because that is a source of information, and that is all.

Q. Do you know whether Mr. Tottis buys poultry from you? A. We only sold Mr. Tottis one bill of goods a few weeks ago, which was through an error——

Mr. Rice: I object, your Honor.

The Court: What has that to do with this case, whether he sold Mr. Tottis poultry or not?

Mr. Heller: Tottis said that he was an expert commission man, your Honor.

The Court: I don't care what he said; we are not going into all of his transactions. You are asking him a question which is purely collateral, and we are not going to try out all of those questions. Anything that affects the defendants, yes, or anything that affects the Government officers, to show anything in reference to his duty, yes, but when you are asking some witness that is called here as an expert, and then try to go out to prove
3617 various things, no, that is collateral, and that is not correct. You have his answer anyhow that he did sell, whether through an error or not.

Q. Now, in your opinion as an expert in the industry, can you tell us whether straight killing can be enforced?

Mr. Rice: I object to that, your Honor.

The Court: Well, it is his opinion.

3618 Mr. Rice: How does the validity of the straight killing Code depend upon its enforcibility, your Honor?

The Court: You can show whether or not it affects interstate commerce.

Mr. Heller: I have already asked him that.

The Court: Yes. I do not think you can go into the enforcibility. We have had a lot of laws that were difficult to enforce. This is the Code; if it does not affect, all right; if it does affect, all right.

Congress passed on its reasonableness, that is, the reasonableness of the law,

and they invested power to adopt rules and regulations. These rules and regulations have been adopted and they are the rules and regulations. They have got to show that a violation of those rules and regulations, by these defendants, affect interstate commerce. Nobody could tell whether they could be enforced. Any law can be enforced even though it might be difficult.

Mr. Heller: I understood that the reasonableness of a provision can always be questioned. That was the purpose of that question. 3620

The Court: The question of whether it affected interstate commerce is a question of fact for the jury.

Q. Now suppose the Schechters do not comply with the provisions of straight killing, will that bring in any diseased chickens of any sort? A. Positively not.

Q. Will that bring in any culls? A. Positively not. 3621

Q. Will that affect the amount of chickens that come into the City of New York? A. Positively not.

Q. Will that affect the price? A. No, sir.

Q. Will that in any way interfere or affect the supply and demand? A. Positively not.

Q. Will the fact that a person pays less wages in any way interfere with the number of chickens that come into the City of New York? A. Positively not.

Q. Will that cause to divert the number of shipments that come into the City of New York to other centers? A. It will not.

3622 Q. Can you tell us specifically as to why it could not? A. Why it could not affect other markets?

Q. Yes. A. Why, the poultry shipped here already is listed and posted at noon on Tuesday with the Code of Authority, and naturally the amount of cars listed can be the only ones available to the market in that week. And the price is established on those cars. And anything that comes in after Tuesday noon cannot be unloaded that week.

3623 Q. In other words, am I to understand on one day of the week you know how many cars are coming in that week? A. On Tuesday we know approximately how many cars there will be for the week.

Q. How many cars will come into the City of New York? A. How many cars will come into the City of New York.

Q. You already know that? A. We know that on Tuesday noon.

Q. And what somebody else does in a slaughter house could not affect that number of

3624 cars that come in? A. Positively not.

Q. That has no relation at all with the business that you do, has it? A. No, sir.

Q. Do you know whether there is a certain demand for certain poultry every day of the year in the City of New York? A. There is a demand for all grades of poultry every day of the week.

Q. And poultry is shipped in regardless no matter of what anyone may do in a slaughter house? A. Poultry is routed and shipped to here, and that is all there is to it.

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Q. And would that affect, his conduct and his business, would that affect your price that you got? A. Positively not.

Q. Would it affect the price that anybody else would get for his poultry? A. No, sir.

Mr. Heller: That is all.

Cross examination by Mr. Rice:

Q. Mr. Levin, you have endeavored to tell us how the price of poultry is arrived at? A. The price of poultry?

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Q. Just answer my question. A. I say that the price——

Q. I say have you endeavored to tell us how the price of poultry is determined on the New York market, yes or no? A. Well, I can't get your question, have I endeavored——

Q. What is that? A. I do not grasp your question.

Mr. Rice: Read the question.

(Question repeated as follows: "Have you endeavored to tell us how the price of poultry is determined on the New York market, yes or no?")

3627

A. Yes.

Q. You profess to be familiar with the method of determining the price? A. I do.

Q. Of poultry? A. I do.

Q. That is you are familiar with the fact that the commission men and the buyers, that is the slaughter house operators, get together every morning and haggle about the prices? A. That is right.

Q. You are familiar with that? A. Yes.

Q. Everybody is familiar with that? A. Most everybody in the business.

3628 Q. But you are not familiar with the economic factors that bear upon prices, are you? A. I am not.

Q. You are not an economist? A. I am not.

Q. You haven't studied economics? A. I have not.

Q. But you have expressed the opinion that the competitive practices among the slaughter house operators do not affect the prices? A. I have.

Q. Is that right? A. Yes, sir.

3629 Q. No competitive practices among the slaughter house operators affect prices? A. Positively not.

Q. You are positive of that? A. Yes, sir.

Q. No competitive practices whatever? A. Positively.

Q. Don't you know that the whole N. R. A. is built on the principle that competitive practices do affect prices, and the amount and character of commerce flowing in that particular commodity? A. I do not.

Q. You do not know that? A. No.

3630 Q. You haven't studied the background of the N. R. A.? A. I have not.

Q. Or the background of the Live Poultry Code? A. I have not.

Q. You do not understand the Code, do you? A. I understand certain parts of the Code.

Q. You do not understand the purpose of it? A. I understand certain parts of the Code.

Q. You are against the Code? A. I am.

Q. You want to smash it? A. Do I want to smash it?

Q. You want to smash it. A. I am against the Code.

Q. You and all the other commission men at West Washington Market are against the Code? A. I am talking for myself.

Q. I saw that you and the other commission men in West Washington Market are against the Code? A. I am speaking for myself.

Q. Is it true that you and the other commission men in West Washington Market are against the Code? A. It is not true, I am talking for myself only.

Q. You are just talking for yourself? A. I am. 3632

Q. You were here when the other commission men testified yesterday? A. I was.

Q. You listened to their testimony? A. Some of their testimony.

Q. And you spent a number of days here when the Government was putting in its case? A. While the Government was putting in its evidence?

Q. Yes. A. I was only here about two hours one afternoon.

Q. Didn't I see you here two or three days? A. That is not right, I was only here one afternoon for two or three hours. 3633

Q. You have been subpoenaed to testify in another Government proceeding, have you not? A. Have I been subpoenaed?

Q. Yes. A. To testify?

Q. Yes, in another Government proceeding. A. I was called, yes, I have, you called me.

Q. Yes, I called you. A. Yes.

Q. I called you before the grand jury, did I not? A. No, you did not—yes, you called me before the grand jury, that is right, excuse me.

Q. And I confronted you by a special agent of the Department of Justice? A. You did.

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Q. And I asked you whether you had made certain statements in his presence?

Mr. Heller: I object to this collateral issue, this does not affect his expertness in this field.

Mr. Rice: I am attacking his credibility, your Honor.

The Court: You can question him along that line, but you cannot call the agent. He is bound by his testimony collaterally the same as you were. That is just what I ruled against you. You can ask the man what he said, but you can't call somebody else to disprove it.

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Q. I examined you at great length regarding a certain transaction occurring in West Washington Market? A. A great transaction?

Q. A certain transaction. A. A certain transaction?

Q. Is that right? A. Yes, sir.

Q. I asked you whether you had made certain statements? A. You did.

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Q. I asked you whether you had anything to do with the conspiracy in the duck industry——

Mr. Heller: I think that is very prejudicial, your Honor.

The Court: I think that is rather remote. We are getting into bad ways when we get into that, when we get into trying these collateral issues.

Mr. Rice: Very well, I didn't intend to go into it at great length.

Q. I confronted you with a special agent of the Department of Justice, and the agent told you you were not telling the truth?

Mr. Heller: I object to that.

A. He told me——

The Court: No, he can ask him that.

Mr. Heller: We haven't any information as to what transpired.

The Court: That doesn't make any difference whether you have or not, he is trying to show whether this man said something different at some other time.

Mr. Heller: About the duck industry. 3638

Mr. Rice: About the methods of fixing prices at West Washington Market.

Mr. Heller: Let him ask him about the poultry industry.

The Court: I know, but let him conduct his cross examination, do not tell him how.

Q. I confronted you by a special agent of the Department of Justice? A. You did.

Q. And I asked you to speak so that he could identify your voice? A. He did.

Q. And he said, "That is the voice"? A. He 3639 did.

Q. He said, "I am positive that is the man"? A. He did.

Q. And he said you were lying? A. He did.

Q. And were you lying? A. No.

Q. You weren't? A. No, emphatically no.

Q. And there was another man present? A. There was—when?

Q. At the time this conversation took place? A. Where?

Q. At West Washington Market. A. There were several people there.

3640 Q. Several people present? A. Yes, several buyers and receivers.

Q. And I called one of the other persons that were present? A. I do not know who you called.

Q. And he said you were lying? A. I don't know what he said, I do not even know who you called.

Q. Then I called you before the Grand Jury, didn't I? A. You did.

Q. And I called the special agent there? A. You did.

3641 Q. And I had him identify you? A. You did.

Q. And you don't know what took place before the Grand Jury? A. I do.

Q. When you were out? A. When I was out?

Q. Yes, you did not follow up the Grand Jury proceedings, I presume, after you left? A. I did not, positively not.

Q. Have you told us everything about the method whereby prices are determined at West Washington Market? A. To the best of my knowledge I have.

3642 Q. You have never heard of any price-fixing in West Washington Market? A. I have not.

Q. You have never heard of any commission men getting together and holding prices up? A. They have not.

Q. Never heard of it? A. No, sir.

Q. You have never heard of a monkey? A. A monkey?

Q. A monkey. A. I have heard of monkeys, yes.

Q. What is a monkey? A. A monkey is an animal with four legs, with a long tail.

Q. What is a monkey in the live poultry industry? A. We have no monkeys in the live poultry industry. We have all gentlemen.

Q. You have been in this industry fourteen years? A. I have been in this industry twenty-two years.

Q. Twenty-two years, I beg your pardon. And you have never heard of a monkey who arranges with a commission man to bid higher than prevailing prices at West Washington Market? A. I have not heard of a monkey in the West Washington Market.

Q. You were not one of the commission men who were convicted a number of years ago of price-fixing? A. I was not. 3644

Q. You were not? A. I was not.

Q. Do you know a number of them were? A. I do.

The Court: That does not make any difference, what he knows about. Interrogate him, if he was convicted, but he said he was not.

Q. But you say that there has been no price-fixing among the commission men in the past? A. I—there has not. Supply and demand makes the price. 3645

Q. Now today supply and demand does make the price, is that right? A. Yes, sir.

Q. And there are various economic factors that go into price-making, aren't there? A. Economic factors?

Q. Yes. You don't understand that, do you? A. No, I do not.

Q. All right, we will let it go. All you know is that the commission men and the buyers meet at a common place in West Washington Market and they haggle over the price? A. No, they meet over at 60th Street.

3646 Q. And sometimes at West Washington Market? A. They make the express market in West Washington Market.

Q. But you do not know what else determines the price of poultry? A. Nothing else determines the price of poultry.

Q. You are positive that competitive practices among the slaughter house operators have no effect upon price? A. Right; it has no effect whatsoever.

3647 Q. And you are positive that that is true of other industries? A. Of other industries?

Q. Of other industries. A. I cannot tell you about other industries.

Q. You were telling us about the egg industry and the butter industry.

Mr. Heller: He would not let him answer.

The Court: No, he was only telling Mr. Heller about the comparative ranges in those two from the reports, that is all.

Mr. Rice: I withdraw it.

3648 Q. You do not know anything about any other industry? A. About any other industry?

Q. Yes. A. Only just what I hear and read about.

Q. Don't you know that the total aggregate value of live poultry sold in New York in 1933 is about thirty-five per cent. of the total aggregate value of live poultry sold in New York in 1927, thirty-five or forty per cent., don't you know that? A. Well, I know the demand has fallen off. That is all I can answer you.

Q. Don't you know it has fallen off to about thirty-five or forty per cent.? A. I would not say that.

Q. Don't you know that other food commodities have fallen off only half as much? A. I could not answer your question.

Q. You do not know that? A. I could not answer that.

Q. I believe you did say that the falling off of consumption was partially as the result of the depression, is that right? A. I do.

Q. Partially as the result of depression? A. Yes.

Q. What do you understand to be a depression? 3650 A. What do I understand to be a depression? Business conditions have fallen down.

Q. Yes. A. Public hasn't got any money.

Q. And bad competitive practices, is that right? A. I did not say bad competitive——

Q. I am asking you now——

The Court: Let him finish. He has not finished. Go ahead.

A. (Continuing) I said falling off of business, people out of work.

Q. What causes those things? A. What caused the depression? 3651

Q. Yes. A. You are asking me? What do I know what causes a depression?

Q. That is all I wanted to know. You do not know what causes a depression, do you? A. I know a falling off of business—of business, sales, and people out of work.

Q. And you do not know that bad competitive practices accentuate a depression? A. I don't.

Q. Make it worse? A. I don't.

Q. You don't know that? A. I don't.

Q. You do not know that the Codes under the N. R. A. are designed to correct the bad competi-

tive practices and to alleviate the depression? A. I do not know anything—I don't know much about the Code at all.

Q. That is right. A. I never attended a Code meeting except once, and that was I was a guest.

Q. Then you went down with Benjamin Forsmith to Washington? A. I did not go down with Benjamin Forsmith. I went down to visit Washington. I did not go on any Code hearing.

Q. You had never been in Washington before?

3653 A. First time I was ever in Washington in my life. Beautiful country.

Q. You know Benjamin Forsmith, don't you? A. Know him very well.

Q. He was a retailer, was he not? A. Retailer, and one time he was a wholesaler.

Q. During the year 1934, when he was in business, he was only a retailer, was he not? A. 1934, retailer.

Q. Only a retailer? A. Only.

Q. Since this Code has come into effect he was never been a wholesaler? A. No, he has been a retailer.

3654 Q. Where did he do business? A. He does business over in Brooklyn.

Q. Whereabouts? A. I could not tell you the street. I would not know his——

Q. Lexington and Tompkins? A. Lexington Avenue, somewheres around there, that is right.

Q. In the Williamsburg section? A. Williamsburg? I could not tell you whether it was Williamsburg or Flatbush.

Q. He was never a competitor of the Schechters, was he? A. Who is that?

Q. Benjamin Forsmith. A. I could not say he was a competitor, no.

Q. He couldn't be a competitor? A. No, he couldn't be a competitor if he had been in the retail end.

Q. That is right. A. Positively, he couldn't be a competitor.

Q. He wouldn't have any reason to persecute the Schechters, would he? A. To persecute them?

Q. Yes. Do you see any reason why Benjamin Forsmith should persecute the Schechters? A. No, I could not see any reason why he should.

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Q. He is not in business today, is he? A. No, as far as I understand.

Q. He is giving all his time to the Live Poultry Code Authority, is that right? A. In the last month or so he has.

Q. He has given up his business since July, 1934? A. I could not tell you just what date.

Q. You stated that Dr. Ives came into the picture ten or eleven years ago? A. About ten or eleven. I don't know just exactly.

Q. As a matter of fact, wasn't it exactly eight years ago? A. I told you I didn't exactly know the amount of years.

3657

Q. Wasn't it about November, 1926, when the Joint Inspection Service was inaugurated? A. Whenever it was, that is, when it opened up, that is all I can tell you. I don't remember the date.

Mr. Rice: That is all.

Redirect examination by Mr. Heller:

Q. Now, what benefits did you get out of the Code? A. I got no benefits whatsoever. It just saddled me with extra expense.

Q. And that is the only benefit you have gotten? A. Yes, that is the only benefit.

3658 Q. Do you know of anybody else that got any benefit? A. I don't know anybody else that got any more benefit than I have.

Q. Mr. Rice said should Mr. Forsmith have any reason to persecute the Schechters, and you said you don't know whether he should or not? A. That is right.

Q. Did you recently have a conversation about the Schechters?

Mr. Rice: I object, your Honor.

3659 The Court: Now, we are not going into that. You brought out one question that I let you go after, but we are not going to try over all these collateral issues. You raised the question here that this man who was an agent, charged with enforcement, that he was in the same business that he was, and now the evidence of this witness is that he was never a slaughter house man, but was a retailer. We are not going to try all the collateral issues.

3660 Q. Now, do all retailers buy at the West Washington Market? A. Some buy at the West Washington Market and some buy at 60th Street.

Q. Are those substantial purchases? A. They are.

Q. Now, when you say he is a retailer what do you mean, is he a butcher? A. No, he is a retailer, he just buys poultry—he retails them out in individual chickens.

Q. Do those fellows buy large quantities? A. Some buy large and some buy small quantities; it depends on their business and the section they are in.

Mr. Heller: That is all.

(Witness excused.)

DAVID PACK, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. Jacob Heller:

Q. Mr. Pack, how long have you been engaged in the live poultry industry in the Metropolitan area? A. About eighteen years.

Q. Talk up loud now, please, so that this man here (indicating Juror No. 12) can hear you. A. Yes, sir, I will. 3662

Q. How old are you? A. Thirty-one.

Q. And with whom were you engaged in the business, and where? A. I was engaged with my father for a number of years in Astoria, and then about four years ago I formed a corporation with three other men—my brother and two other men, and we were in Astoria for about a year and a half, and then we moved to Brooklyn.

Q. And in what branches of the live poultry industry were you? A. Slaughter house man.

Q. At all times? A. At all times.

Q. Now, will you tell us, tell the Court and the jury, just what you did? A. We bought poultry 3663 and we took into our places and we slaughtered it and sold it to the butchers and retailed it to customers.

Q. Were you in a business similar to that which the Schechters are in now? A. Yes.

Q. You know the Schechters, do you? A. Yes.

Q. And you know they are slaughter house people? A. Yes.

Q. And you have had occasion to visit their place of business? A. Yes.

Q. Both before and after the Code? A. Yes.

Q. Were you ever employed by the Code Authority? A. Yes, sir.

3664

Q. In what capacity? A. As an investigator.

Q. And who was your supervisor? A. Mr. Forsmith, I believe.

Q. Can you tell us about when you were employed and how long you remained in their employ? A. I don't remember the dates, but I was in their employ for about a week, but I don't remember the dates.

Q. And what duties were you assigned to? A. I was assigned to go to certain places in the morning and watch how they killed the poultry

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and to ask to look at their books and to look at them if they allowed me to.

Q. What places did you go to? A. I was in various places.

Mr. Rice: How is this material, your Honor, unless he investigated the Schechters?

Mr. Jacob Heller: Now, we are going to get right down to that.

Mr. Rice: Well, let us get down to it then.

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Mr. Jacob Heller: And then, your Honor, I am going to attempt to show that certain provisions with which we are charged as not having complied with, are unreasonable, and for that reason unconstitutional.

The Court: That is not before us, it is not before this jury, whether they are reasonable or not.

Mr. Jacob Heller: I ask you for an exception, and I will abide by your Honor's ruling.

The Court: You ask the questions and then there will be an objection and I will

rule. Now what you want to do is, you want to offer evidence to show that some provisions of the Code are unreasonable.

Mr. Jacob Heller: That is correct.

The Court: I will not allow you to show it. You can have an exception to my ruling. The question is not before us; the question before us, that you may present, is whether or not it affects interstate commerce, but we are not dealing with the reasonableness of the regulations which it was conceded was enacted in pursuance of the Statute. 3668

Q. During the time that you were so employed did you visit the premises of the Schechters? A. Yes.

Q. And do you know the addresses of their places of business? A. Yes.

Q. What are they? A. I don't know, that is, I don't know exactly, but I know it is the Rugby Poultry on East 52nd Street.

Q. And do you know another one on Rockaway Avenue? A. Yes. 3669

Q. And pursuant to your duties did you make an inspection at those places?

Mr. Rice: I object to the lumping of his duties. Let us hear what he did, let us see what his duties were and what his instructions were.

The Court: I do not see the materiality unless it relates to these charges.

Mr. Jacob Heller: It does, your Honor.

Q. Now, from whom did you receive your instructions?

3670 Mr. Jacob Heller: Mr. Forsmith, he said before.

Q. From whom did you receive your instructions? A. Mr. Forsmith.

Q. What did he tell you to do? A. He assigned me, I believe, at two different points to the Schechter Brothers on East 52nd Street.

Q. What did he tell you to do there? A. To watch the killing and to ask to look at the books.

Q. And did you go there? A. Yes.

3671 Q. Tell us what you saw when you got there.

Mr. Rice: I object to that.

The Court: Because they kill properly on some occasions would not be evidence that they did not kill improperly on another.

Mr. Jacob Heller: In this event, your Honor, we will withdraw the witness, as long as we cannot go into these matters.

Mr. Rice: Then you consent that all his testimony be stricken out, otherwise I should like to cross examine the man.

3672 Mr. Jacob Heller: We do not consent to strike the testimony out; you may cross examine.

Cross examination by Mr. Rice:

Q. Now, Mr. Pack, you say you were in the employ of the Code Authority? A. Yes.

Q. Did you ever get paid by them? A. No.

Q. You never got a penny, did you? A. No.

Q. As a matter of fact, weren't you in the employ of the Live Poultry Slaughter House Association? A. Well, indirectly, the Live Poultry Slaughter House Association were supposed to

3673

turn over the money to the Code Authority for our pay and they did not, and we were discharged for that week.

Q. You got fired, didn't you, you got fired the first day you worked? A. Not the first day.

Q. You just worked one day and that was a Thursday? A. I worked for practically a full week.

Q. Didn't you work just one day? A. No, sir.

Q. You were loaned by the Live Poultry Slaughter House Association to the Code Authority? A. Yes.

3674

Q. And you, together with eight other people, who were loaned from the Association, is that right? A. Yes.

Q. And the whole bunch of you got fired after working one day? A. I worked a full week.

Q. You did not put in a full week's time, did you? A. I did.

Q. The Code Authority did not know that you worked for more than one day, did they? A. Mr. Forsmith knew that I worked for one week.

Q. Are you sure about that? A. Positive.

3675

Q. When you first came to the Code Authority office it was on a Wednesday night, wasn't it?

The Court: Has he testified to anything at all, Mr. Rice?

Mr. Rice: Just a few questions, your Honor, because I fear that just puttting this witness on the stand may tend to prejudice the jury.

The Court: Very well.

The Witness: I don't remember whether it was Wednesday night or not.

Q. You do not remember that? A. No.

3676 Q. You do not remember that Benjamin Forsmith gave you your instructions on Wednesday night? A. No.

Q. And that you went out on Thursday? A. No, sir.

Q. And that when you came back on Thursday you were fired, is that right? A. I had——

Q. Yes, or no, is that right? A. No, it is not right.

Q. It is not right? A. No.

3677 Q. You claim you worked a week? A. I was interviewed by Mr. Forsmith more than one afternoon, I remember three——

Q. Before you started working? A. After I started working.

Q. Do you know why you were fired? A. Because the budget could not afford us, and the members of the Live Poultry Slaugher House Association did not give the Code Authority the money for us.

Q. Do you know why else you were fired?

Mr. Heller: He said he wasn't fired; he didn't get paid.

3678 Q. Do you know any other reason why you were fired?

Mr. Heller: That is what he said; he wasn't paid.

The Court: Let him answer.

Q. Do you know any other reason why you were fired? A. No.

Q. Weren't you told? You weren't told? A. No, we weren't told any other reason.

Q. You weren't? A. No.

Q. At that time you were engaged in the industry, were you not? A. No, sir.

Q. You were not? A. No, sir.

Q. Your brothers were? A. I do not believe so.

Q. Well, now, think. A. I am pretty sure I wasn't.

Mr. Heller: That hasn't been brought out on direct examination.

The Court: No.

Mr. Heller: You didn't let us go into that, and now he is going into this entire thing and making him his own witness. 3680

Mr. Rice: This will take only a few questions, if your Honor please.

The Court: Go ahead.

Q. Wasn't your brother engaged in the industry at that time? A. I do not believe he was.

Q. You are in the industry today, aren't you? A. Yes, sir,

Q. You are competing with other slaughter house men? A. No, sir, I am only working in the industry.

Q. You are only working in the industry? 3681
A. Yes, sir.

Q. Are you working for somebody else? A. Yes, sir.

Q. You are not a member of the union, are you? A. No, sir.

Q. You are not just a plain working man, are you? A. I am working for my brother.

Q. What do you do? A. I am a buyer.

Q. You are a buyer? A. Yes, sir.

Q. And your brother operates a market? A. Yes, sir.

Q. Is that right? A. Yes, sir.

3682 Q. Was there as a reason why you were fired because you were going around to various slaughter house markets and getting secret information from them to use in your own business?

Mr. Heller: There is no such testimony, that he was fired, or that he got any secret information from anybody.

The Court: You opened that door; I kept the door closed; and if you are going
3683 to open up the door and make him your witness, that is another thing. I stopped him.

Mr. Rice: Very well, I will abide by your Honor's——

Mr. Heller: In the meantime he has asked the question.

The Court: I stopped him from testifying to that. It doesn't make any difference what he was doing, he didn't do anything down there; I stopped him. He went down to the place, and he asked for
3684 something, and I stopped him, and that is the end of it.

Mr. Rice: Very well; that is all.

(Witness excused.)

JULIUS KASTEIN, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. Heller:

Q. Mr. Kastein, are you in business? A. I am in the live poultry commission business.

Q. What address? A. 26 Bloomfield Street, West Washington Market.

Q. How long have you been in that business? A. About 20 years.

Q. Are you considered the largest commission merchant at West Washington Market? A. I have been for the last five or six years.

Q. Are you a member of the Advisory Committee of the Code? A. Yes, sir.

Q. Sitting in with Mr. Peterson, do you advise him? A. Well, we have our meetings and we discuss matters.

Q. Were you called here by the Government as a witness? A. No, I was subpoenaed by Heller. 3686

Q. Myself? A. Yes, sir.

Q. Now, Mr. Kastein, will you tell the jury something about your experiences in the industry? A. At the present time?

Q. From the beginning to the end.

The Court: Your experiences he said.

The Witness: Experiences in the industry. Well, my experience in the industry is that for the last year or so things are becoming very bad, we have got really a chaotic condition in the industry—— 3687

The Court: Yes, but counsel wants to know your experience, when you started, what did you do, what has been your work.

The Witness: I started as a slaughter house man and was in that end of the game for about 10 years.

The Court: When?

The Witness: We started about 20 years ago.

The Court: All right.

The Witness: About 10 years ago we went into the commission business, and

3688 since that time we have been in the commission business.

Q. And as a commission merchant will you tell us your daily experiences, what you do, what happens with poultry? A. Well, we go up on the railroad early in the morning and sell our poultry to our customers, to the slaughter house men, and we usually have quite a bit of poultry, have say 5 or 6 cars of poultry.

Q. A day? A. Sometimes, some days more,
3689 some days less. And we have different grades of poultry, and we sell those various grades according to price. For instance fancy poultry brings you one price, western poultry brings another price, average poultry brings another price.

A little later in the day about 9:15 the reporter of the Urner-Barry Company comes around and we show to him what business we have done. This reporter sees every receiver in the market, and he gets their sales and he quotes the market on the sales that he gets from the
3690 various receivers, and that becomes the market quotations for the day. Then after that the market is according to supply and demand, sometimes it gets firmer, sometimes weaker, and that is our regular business.

Q. Where do you buy your poultry? A. We do not buy the poultry, we handle on consignment.

Q. What States of the Union do you get consignments from? A. I would say about 20 States in the United States, Indiana, Illinois, Missouri, Nebraska, Kentucky, Tennessee, Alabama, and various States, various other States, Arkansas and other States.

Q. Does the season depend as to what grade—does the season affect the poultry, that is the amount of poultry that comes in from various States? A. Yes, different sections have different seasons of the year.

Q. Will you explain that to the jury? A. Yes, like in the Spring here we get our poultry from the Southern States, Arkansas, Tennessee, Kentucky, Oklahoma, Texas. In the Fall of the year we get the bulk of our poultry from Ohio, Indiana, Illinois, Missouri, Nebraska. The reason 3692
for that is around the Fall of the year the poultry from the Southern States is very poor, and we get our good poultry from the Western States. And in the Spring of the year when lighter fowl is wanted we turn to the Southern States; and the poultry in the Middlewest and the Western States is very light at that time.

Q. Will you describe the kinds of poultry that come into the market in New York City as to grades? A. Well, personally our firm handles the very finest poultry that comes into New York. We handle very fine poultry. The bulk 3693
of our stuff is from Ohio, Indiana and Illinois, and we try to get very fancy stuff.

Q. And how is the poultry graded in the City of New York before it is sold? A. It is sold straight run according to States and grades.

Q. Can you describe some of the grades, you mentioned fancies. A. Yes, like we sell Ohio, Indiana, and Illinois, that usually grades as right fancy poultry. And you take poultry from Iowa or Nebraska, that is known as western poultry. You take poultry from northern Missouri, that poultry we would call that fancy western poultry. You take poultry from Tennessee or from Oklahoma or Texas, we call that

3694 average poultry. And we get some grades from Tennessee that you would call poor.

Q. Are those the grades of poultry that exist in the industry today? A. Yes, sir.

Q. Do you know of your own knowledge whether or not during your 20 years' experience any carload or any portion of a carload of poultry has come into the City of New York that could be called diseased poultry? A. Well, no. For the last 10 years we have had this supervision of the United States Department of Agri-

3695 culture. Anything which is diseased is immediately killed by the inspector. They do not give us an opportunity to sell a diseased bird. If we wanted to we have no access to the car until the car is inspected by the inspector, we can't go into the car until we get the certificate which says that the poultry is absolutely inspected and in good health.

Another thing if we do sell any poultry that someone objects to, if it is diseased it is turned back by the buyer, it is rejected by him. Anything that he does not want he throws it back,

3696 so that there is a double check on it. We really could not hope to have any for sale, because there is a double check on it.

Q. Do you know whether there is a market in New York for diseased poultry? A. No, it is impossible to sell it because we have the check of the Health Department, and then we have our own inspectors, and they themselves would call up the Health Department if there were any diseased birds.

Q. Is there such a thing as a price quotation for diseased poultry? A. No such thing.

Q. Is there such a thing as a market in New York City for culls? A. No, we are not allowed to sell anything like a cull.

Q. Do you know whether there is a price quotation for culls in the City of New York? A. No.

Q. You are sure about those two things? A. Absolutely.

Q. Do you sell to the Schechters? A. I do sell to the Schechters, yes, we sell them whenever they want anything.

Q. How long have you been selling the Schechters? A. 10 years, I think about 9 or 10 years. 3698

Q. Do you know every one of the Schechters sitting at the table? A. Yes, I know them all.

Q. How long have you known the defendants? A. Well, I imagine about 9 or 10 years.

Q. Do you know other people that know these defendants, market people? A. Well, they are well known figures in the business, they are factors in the industry.

Q. Have you had any occasion to talk to other commission merchants about the Schechters? A. We discussed credit and so on, yes, we have discussed lots of people. 3699

Q. Do you know the general reputation of the defendants? A. Well, their record is very good as far as we are concerned, as far as their bills are concerned they always pay their bills——

Mr. Rice: I object to that and move to strike it out.

The Court: Strike it out.

Q. I am not asking you as to credit. A. Their credit standing is good.

Q. I am asking you about their general reputation, what is their general reputation as to honesty—— A. I think they are very fine boys.

3700

Mr. Rice: I move to strike that out.

The Court: Strike it out, the question is is their reputation good or bad?

The Witness: Their reputation is good.

Q. Would you say it is very good? A. I would say very good.

Q. What would you say is their reputation as to quietness? A. They are very fine respectable boys.

Q. What is their reputation as to being law-
3701 abiding citizens? A. I think they are O. K., 100 per cent.

Mr. Rice: I move to strike that out.

The Court: Yes, good or bad is the answer.

Q. As to honesty in business. A. Very good.

The Court: You didn't answer the other question because I struck it out. If you want an answer to that we will have it repeated, if you want it repeated you may.

3702 Repeat the question.

(Question repeated as follows: "Q. What is their reputation as to being law-abiding citizens?")

A. Good.

The Court: Now if there is anything else go ahead.

Q. Yes. Mr. Kastein, have you studied the various reports that exist pertaining to the live poultry industry? A. Well, I try to study them as much as I can, yes.

Q. Which ones do you study? A. Well, I study the market conditions in New York and Philadelphia, Chicago, and other markets and compare them with the New York market.

Q. No question about that? A. I try to, yes.

Q. You have done that for how long? A. Quite some time.

Q. Do you know how the price is fixed in the City of New York for the poultry that the commission merchants sell? A. Well, the price is not fixed. The price—the Urner-Barry Company has their reporter which comes around and gets the sales from the various commission men and he quotes the market accordingly. 3704

Q. How is that price determined? A. Well, the reporter comes up on the railroad, where we do most of our business, and he interviews each receiver and he tells them what business he has done and who he sold to, and he makes a record of it and then when it is all through he quotes all these various prices.

The Court: I do not think you understood the question that counsel has asked you. He did not ask you how the reports are made up. He asked you how the price is arrived at on the market. 3705

The Witness: That is just how it is arrived at.

The Court: Where is the place?

The Witness: On the railroad at 60th Street, New York.

The Court: Now, he asked you how the price was fixed.

Q. Just tell us the routine as to how the price is arrived at. A. The routine is that this reporter interviews each receiver and these re-

3706 ceivers tell him what they have done, what business they done, and he makes a record of it.

The Court: Before they start to do business?

Q. Before you sell it? A. Before they sell it?

Q. Yes. A. In the morning the poultry is inspected by the United States Department of Agriculture and they go through the car carefully and anything which is unfit they kill, and then
3707 we tell our buyer that we got this car and they go in and they look it over, and if they like it they buy it.

Q. How do the buyers know what the prices for the poultry are? A. Some buyers agree on a definite price before the market is established, and other buyers take it on the basis of quotations.

Q. What determines the fixing of the price? A. Well, there is no such thing as fixing a price. These sales which the Urner-Barry reporter gets, he quotes, and they become the market price. That is the recognized price for the day.
3708

Q. What determines the price you are to get for your poultry? A. Supply and demand makes our price.

Q. How does that vary from day to day? A. It all depends on how many receipts we get in. If the receipts are short, we get more money for it; if the receipts are heavy, we break the market.

Q. That is the only way the price is fixed? A. Supply and demand is the only way we regulate the market price.

Q. If you rece[illegible] many carloads of poultry, the price declines? A. The price declines.

Q. Does the quality of the poultry decline? A. No, quality has nothing to do with price.

Q. Are you sure about that? A. Has nothing to do with it.

Q. That has been the uniform practice? A. Yes.

Q. If you get any shortage of carloads—— A. Why, then we ask more money for the poultry.

Q. And does that affect the quality in any way? A. Why, no, but we have our different ranges of quality, different quality no matter what the market is, they may be fine, we sell fancy grades for more money and average grades for less money. 3710

Q. There is a difference in price between the fancy and the average? A. Yes, there always is.

Q. Difference of price between the average and poor poultry? A. Yes.

Q. By poor poultry what do you mean? A. I mean thin-breasted, a little poorer quality, isn't as good as the fancy grade.

Q. Those chickens are edible? A. Oh, yes; I have eaten them many times.

Q. Do you know whether the price in the City of New York on any day of the week has any effect on the price that the commission merchants may get in Philadelphia or Chicago? A. No. New York has got a market of its own. We have nothing to do with any other market. The only thing is, some markets are based on the New York quotations. Boston gets cars whatever the New York market is; or Newark gets cars on the basis of New York quotations, but as far as we are concerned, we run our own business. We sell it solely on supply and demand. 3711

3712 *Julius Kastein—By Defts.—Direct*

Q. Are you familiar with some of the practices provided in the Code? A. Yes; I am on the Advisory Board.

Q. You are very familiar with them? A. I attended these meetings.

Q. Have you studied the relation, if any, between practices of the trade and the prices and volumes, and volume of goods? A. I would like you to make that a little more plainer.

Q. You are familiar with the trade practices? A. Yes.

3713 Q. Have you studied as to what effect these trade practices might have upon the prices you are to get for your poultry? A. Well, I do not think it has any effect whatever——

Mr. Rice: Just a moment.

A. (Continuing.) No.

Mr. Rice: I move to strike that out.

The Court: Yes, strike it out.

Mr. Rice: I think——

The Court: He ought to ask him

3714 whether he has studied——

The Witness: I studied the situation, yes.

Q. Now, tell us your answer.

Mr. Rice: Just a moment.

The Court: He said he studied it. Mr. Witness, if you will listen, and when you can answer the question yes or no, do it.

Mr. Rice: Would your Honor permit me to cross examine at this point to see what studies he has made?

Mr. Heller: He said he is on the Advisory Committee, he has attended on the meetings.

Mr. Rice (continuing): To see whether this evidence is admissible?

The Court: If you offer him as an expert, he has a right to cross examine at this time. I let you do it before.

Mr. Heller: Yes, sir, all right.

Preliminary cross examination by Mr. Rice:

The Court: It is limited only to that, this cross examination; then the cross examination generally. 3716

Q. You say you have studied—— A. Yes, sir.

Q. (Continuing.) —the effect of the Code provisions upon prices? A. Yes.

Q. What study have you made? A. Well, I study that every day. I am—that is all I am—I am tangle up in this deal. That is all I do, live poultry, and move around it all day long.

Q. Which particular practice are you referring to? A. You just asked about this question.

Q. Yes, what particular practices have you studied? A. Every practice that comes up. 3717

Q. What particular practice involved in the Code? A. Every one of them.

Q. Which one? Just name one. A. You give me any one you want and I will answer it.

Q. You name any one. I give you first choice. A. You asked the question, I will let you name any one.

Q. Name any practice in the Code. A. You name it.

Mr. Rice: May I have an answer to my question, your Honor?

Mr. Heller: He has given his answer.
The Court: He said yes, all.

Q. Will you name all of the practices in the Code? A. I could not tell you all of the practices in the Code. Name any one you want.

Q. Will you name any practice in the Code? A. You ask any one you want and I will answer it.

Q. Will you name all of the practices? A. You name one.

3719 Q. Will you name any practices in the Code? I want to see whether you know anything about this Code. A. I have attended every meeting of the Code, and if you want to know anything, I will answer it.

Q. Will you name any practice in the Code? A. Ask any question and I will answer it.

The Court: He asked you—you said you had made a study of these things. Now, what trade practices have you considered?

3720 The Witness: Every one of them.
The Court: Well, name some of them.
The Witness: If you want me to bring up the question about straight killing——

Q. All right. Have you studied the relationship between straight killing and the prices received by the commission men for their poultry? A. Yes.

Q. What study have you made? A. I have talked to the bulk of my buyers.

Q. What study have you made? A. That is the study that I have discussed with every one of my buyers, about this straight killing.

Q. All of your information is based upon hearsay, upon what somebody else told you? A. I have had experience in the industry and I discussed with my trade, from the ones that I would do business with, and they are the ones that are supporting this Code.

Q. And you are not a slaughter house operator yourself? A. I have been; I was in it for ten years prior to this.

Q. You have not been a slaughter house operator for the past three years? A. No. 3722

Q. And you have not observed the practice of straight killing at the slaughter house since the Code came into effect? A. No.

Q. You have not? A. No.

Mr. Rice: That is all.

Direct examination (continued) by Mr. Heller:

Q. Do you know what straight killing is? A. Yes.

Q. Will you describe it? A. Straight killing would be at the slaughter house, they would buy this poultry from the railroad and buy it 3723 straight, straight run, and when they got it into their place, they would be compelled to sell that coop or half coop just as it is, just as they got it.

Q. Now, do I understand that they must buy a coop as it is in the market, the West Washington Market? A. They have to take the coop just as it is and sell it the same way.

Q. And they must sell it the same way as they bought it? A. Yes.

Mr. Rice: If your Honor pleases, I do not understand the purpose of this. Is this man purporting to construe the law?

The Court: I do not think so; I imagine that is my duty.

Mr. Heller: Mr. Rice asked him what he knew about it and I am asking him what he knows about it.

Mr. Rice: I believe I asked him whether he was familiar with the Code provision, and that is the only thing in issue in this case. Now, the Code provision does not define straight killing as he is defining it.

3725

The Witness: We discussed it at the meeting of the Advisory Board, and it means just what I said.

Mr. Rice: I object to that, your Honor, and move that it be stricken out.

The Court: Yes, I will strike that out. Mr. Heller, do you want him to tell us—what difference does it make what they discussed? We know what the Code says about straight killing. Now do you want him to give a different definition? We know what it says. Do you want to go

3726

ahead with him and ask him to construe it?—I don't think so.

Q. The Advisory Board is part of the Code Authority? A. Yes.

Q. No question about that? A. No.

Q. And you are on that? A. Yes.

Q. And you discussed each and every provision of the Code?

Mr. Rice: I object, your Honor. This appears to be an attempt to circumvent your Honor's ruling.

The Court: It does not determine what straight killing is in this case, the Code does, and I will interpret it. Ask him questions about his experience, that is all right, but do not attempt to have him interpret the Code. It would not make any difference if these gentlemen solemnly resolved that it meant anything in the world; that would not make it mean that in this case. In this case it means what I say it means.

3728

Q. Can you tell us whether or not a person refusing to kill straight, that such conduct on the part of such person will in any way affect the price that you get for your merchandise in West Washington Market? A. No, sir.

Q. No question about that? A. No.

Q. Will the fact that a person pays less wages than any other, referring to wholesale slaughter house men—in any way affect the price that you would get for your commodity? A. No.

Q. Would the conduct of such person with reference to straight killing or the payment of less wages in any way affect the price that the farmer would get? A. No. 3729

Q. Or the shipper? A. No.

Q. Do you know whether the practice exists of loading poultry with gravel or constipating the chickens in order to make them heavy at this time? A. No, sir, no such condition exists.

Q. And has it existed for the past five years? A. No.

Q. And who consumes the live poultry in the City of New York? A. Well, the bulk of this poultry is consumed by the Jewish trade, and the balance is sold to the gentile trade.

3730 Q. Do you know whether the consumption has dropped in the last few years? A. Yes, it has been on the decline continuously.

Q. And can you attribute that to any particular reason? A. There are many reasons. It is due mostly, I imagine, to the bad conditions. Another factor that I had in mind is that a lot of these Jewish people are turning to dressed poultry. Dressed poultry is on the advance and live poultry is on the decline.

3731 Q. And by bad conditions what do you mean? A. The general bad conditions throughout the country. Take the vegetable business or the fruit business, all produce business has been on the decline, all commodities have had the same effect.

Q. And will unemployment have anything to do with that? A. Yes.

Q. And will bankruptcies have anything to do with that? A. Yes.

Q. And bank failures, will that have anything to do with that? A. Yes.

3732 Q. Now, can any man in the world that you know of point out any particular reason and attribute it to that reason alone for the drop in the consumption of live poultry?

Mr. Rice: I object to that question.

The Court: I do not think he can tell what anybody else in the world can do. He can tell us his opinion.

Q. What is your opinion? A. The general economic conditions have been bad and people haven't got the money, and they are not buying so much live poultry, and some Jewish people are not living up to the real Orthodox religion,

they are buying dressed poultry because they can buy that dressed poultry just a little bit cheaper than we can sell live poultry, and that is the reason they turn to dressed poultry.

Q. Do you know why dressed poultry is cheaper? A. Yes, they can handle it cheaper, they haven't got the overhead that we have got.

Q. Do you know what the difference in overhead is? A. We pay very heavy wages compared with the other industries. Take people in the dressed poultry business, on 23rd Street, 3734
they are paying $25 and $30 a week, and we pay $50 a week. Our unloaders get a lot of money, where they haven't got that in other industries.

Q. You pay higher wages? A. We pay higher wages.

Q. And that enters into the cost of sale? A. Yes, sir.

Q. Production? A. Yes, sir.

Q. Do carloads of culls come into the City of New York as such? A. There is no such thing.

Q. What is a cull, if you know? A. A cull is any bird unfit for human consumption—— 3735

The Court: What kind of culls are you talking about, the culls of the Code?

Mr. Heller: That is right.

The Court: But they are defined in the Code.

Mr. Heller: But the definition in the Code says a chicken that is unfit for human consumption.

The Court: There has been testimony here as to various kinds of culls, various people apply different meanings to the word. You had better let him know what kind of a cull you mean.

3736 Q. In other words, as defined by the Code, culls are birds which are unfit for human consumption. Do culls, according to that definition, come into the City of New York? A. No, sir. I have had cars come in from which we have thrown out two birds, out of an entire carload, and other cars that they just go through without throwing anything out, all real fine, healthy birds.

Q. Would you say that a thin-breasted chicken is unfit for human consumption? A. No, sir.

3737 Q. Is there a market for thin-breasted chickens? A. Oh, yes, yes. The dressed poultry has a range of from eight to ten cents on their grades also.

Q. Do you know whether more culls, as defined by the Code, have come into the City of New York since the Code has been adopted, or prior to its adoption? A. There is no difference; the situation is the same.

Q. Have you received any benefit from the Code, your firm?

3738 Mr. Rice: I object to that as quite immaterial.

The Court: Are we concerned with the benefits that he has received?

Mr. Heller: Well, it is stated in the indictment, if it please your Honor, that the Code has been adopted and has succeeded in improving conditions, and so I am entitled to inquire.

The Court: Do not ask him what he has received; if he knows whether or not conditions have been improved, all right, but not him individually.

3739

Q. Do you know whether conditions have been improved since the adoption of the Code? A. I am very sorry to state we have a chaotic condition now; they are much worse since the Code went into effect.

Q. No question about that? A. Yes; we have a chaotic condition.

Q. That is uniform throughout all the poultry business? A. It seems so right now.

Q. And you are a member of the Advisory Committee? A. Yes, sir.

3740

Q. Of the Code Authority? A. Yes, sir.

Q. Can you specify any particular benefit that the industry received since the Code has been adopted? A. I do not know of any.

Q. Then am I to understand that it received no benefit at all since the adoption of the Code? A. No, we received no benefit whatsoever; we had hardships, I will say, it is quite a hardship on me.

Q. What do you mean by that? A. We have got assessments to pay, which is hard when we do not make any money, and we do not get any benefits.

3741

Q. And that assessment is paid whether you make any profit or not? A. Oh, yes, we are compelled to pay it.

Q. That depends on the number of pounds that you sell? A. Yes.

Q. And it does not depend upon whether you sell at a loss or whether you sell at a profit, you have to pay nevertheless? A. Yes, sir.

Q. No question about that? A. Yes, sir.

Q. Were you present at a meeting when Mr. Peterson was present a few weeks ago, wherein this case was discussed? A. Yes, sir.

Q. Was a certain motion made by Mr. Peterson? A. Motion, yes.

Q. In reference to counsel? A. Yes, sir.

Q. Will you state the nature of the motion? A. Well, there was an effort made to retain counsel, counsel wanted a certain amount of money.

Q. What was it, what did Mr. Peterson say? A. Mr. Peterson brought the matter up we had to change attorneys, and this attorney wants nine hundred dollars in order to be retained to
3743 work on this Schechter matter.

Q. And did he then make a motion with respect to the payment of that nine hundred dollars? A. We discussed it, and we voted on it. We voted not to pay this nine hundred dollars.

Q. And that was supposed to come out of the Code money? A. Everything is paid from the Code Authority.

Q. And everything that the Code Authority gets is from you members? A. Yes, sir.

Q. And that money is being paid for Mr. Peterson's salary? A. Yes, sir.

3744 Q. And for Mr. Forsmith's salary? A. Yes, sir.

Q. And for every other employee? A. Yes, sir.

Q. Do you know whether the character of the grade or quality of poultry that comes into the City of New York, has that changed in the last few years? A. No, the quality is the same.

Q. No question about that? A. Yes, sir.

Q. Have more poor birds come in the last few years than before? A. No.

Q. What does it depend on, whether you get a good grade or a poor grade coming in? A.

3745

Well, certain States have certain grades. It all depends on the market. If the market is good they try to ship a little more poultry in; if the market is bad they stay away from New York, that is all. But every State has their own grade. We might at certain times ge a few more cars of average poultry, and at other times get a few more cars of Western poultry, and at other times get a few more cars of Indiana poultry. But it doesn't really make much difference in the situation, as it is graded according to States.

3746

Q. Can you compare the grade of poultry that comes into the City of New York with other centers, in other States? A. We get just as good poultry in New York as any other place; as a matter of fact, better poultry.

Q. Better poultry? A. Yes. I know that in the Chicago market they get very little, hardly any. Indiana poultry; the shipments of Indiana poultry there are very light. We get all that stuff, it is concentrated to New York, which is the finest poultry in the United States.

3747

Q. Do you know the relative percentage of poultry used in the City of New York as against the other centers? A. Well. I would say that New York City consumes more poultry than all the other cities combined, in reference to car lots and express lots. that is really the fact, of the United States, New York City, with reference to live poultry.

Q. Do you know whether the price as it is fixed in the City of New York has any particular effect on the price in another locality in the United States? A. The paying price in the country depends on the New York market.

Q. What do you mean by that, on the New York market? A. I mean when the huckster goes out to buy his poultry from the farmer he depends on what the New York market is, he knows what to pay the farmer. He has a certain margin of profit, he knows what it costs to operate, and when he is shipping from the West to New York he gauges the price that he will pay the farmer by what the New York market is.

3749 Q. Then it is the commission merchants who determine the price that the farmers will get? A. The only thing is we sell according to the supply and demand, we do the best we can. When we get a carload here we sell it to the best of our ability.

Q. You sometimes sell at a loss? A. Well, we handle it on consignment, but sometimes we sell it at a loss to the shipper, yes, many a time.

Q. There might be a loss to the farmer? A. Well, the farmer gets an outright price. The huckster buys from the farmer and he sells to

3750 the shipper, and the shipper is the one that takes the risk.

Q. Am I to understand that the huckster is the speculator? A. The shipper is the speculator.

Q. And they are located in other States, not in New York? A. Yes, in the west and south.

Q. Not in the City of New York? A. Not in the City of New York.

Q. Then do I understand the farmer gets a definite price? A. The farmer gets a definite price.

Q. That is fixed? A. He gets cash, when the huckster buys from him he gets his money right away.

Q. Is it a fact that the price that the poultry is sold for on the New York market on a particular day determines what the farmer gets that particular day? A. Not the farmer, no, he is not taken into consideration at all one way or the other; it is only the supply and demand here, the situation here makes the price.

Q. Did I ask you whether you sold to the Schechters? A. Yes, I do sell to the Schechters.

Q. You have sold them? A. Yes, sir.

Q. What grade of chickens do you sell them? 3752
A. Well, I sell them fancy poultry, most of the time they come around and want fancy poultry, they want good poultry. I have always sold them good poultry, and he always wants my best stuff. Sometimes he buys some average and some western, but as a matter of fact he has been ready to take Indiana poultry right along, and I have sold him a great deal of that. Also I have sold him some western and some average poultry, all kinds.

Q. Did you ever sell any diseased poultry? A. We never handle any diseased poultry.

Q. Did you ever sell him any culls? 3753
A. We never handle any culls.

Mr. Heller: That is all.

Cross examination by Mr. Rice:

Q. Mr. Kastein, you say you are a member of the Advisory Committee of the Live Poultry Code Authority? A. Yes, sir.

Q. How many members are there on that committee? A. About 15, something like that, I just don't remember, I think it is about 15.

Q. You attend the meetings? A. Every meeting.

3754 Q. And you keep your ears open and hear what is considered at all of these meetings? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. You are a loyal member of that Committee? A. Yes, sir.

Q. You are loyal to the Code? A. Yes, sir.

Q. You are for the Code, aren't you? A. Right now?

Q. Yes. A. Well, from past performance I do not know if I am.

3755 Q. You are sort of wavering, is that right? A. Yes, sir.

Q. You are losing a little business? A. A little business?

Q. Yes. A. I am losing money and business.

Q. You are losing business to Newark commission men? A. No, I don't care about that.

Q. You do not care about that, you do not care about your pocket-book? A. I do about my pocket-book, yes, but I have got my own business to attend to, and I have got nobody to sell to——

3756 Q. Before the Code came into effect the New York slaughter house operators didn't go over to Newark to purchase poultry, did they? A. They always went to Newark.

Q. Didn't they buy all their poultry from the New York commission men prior to the time the Code went into effect? A. As far as I know some of the business has always gone to Newark.

Q. Very seldom? A. I do not consider that makes any difference.

Q. You do not want all your customers, do you? A. My customers?

Q. Yes. A. I only want my business in my way, whatever business I do I want, whatever goods come to me consigned to me I try to sell.

Q. Isn't it true before the Code came into effect there was virtually no slaughter house operator who went to Newark to purchase his poultry from the Newark commission men, but since the Code came into effect there have been at least 20 of them who deal possibly with the Newark commission men, isn't that true? A. I know——

Q. Yes or no? A. You want me to answer it and I can't answer it that way.

Q. Answer yes or no. 3758

The Court: He says he cannot.

The Witness: I can't answer it that way.

Q. Is it true or is it not true? A. A number of buyers always went to Newark for years.

Q. Isn't it true that the number of local buyers, slaughter house operators who have gone to Newark for their poultry has increased since the Code came into effect? A. I do not know about that.

Q. You do not know about that? A. No, sir. 3759

Q. You wouldn't say they haven't? A. I wouldn't say if they have or have not, but I know that local buyers, New York buyers always went to Newark for years to buy poultry, and I always sell Newark buyers and Jersey buyers. I have got plenty of Jersey buyers on my books now.

Q. Well now, before the Code came into effect you had a buyer by the name of H. Ruben, did you? A. Yes.

Q. A big buyer? A. Yes.

Q. New York buyer? A. Yes.

3760 Q. Bought from you all the time practically, didn't he? A. He bought a lot of poultry from me.

Q. Where is he buying his poultry today? A. I don't know if I can answer that. I can take it up with the Judge——

Q. Where is he buying his poultry today? A. I cannot answer that for a certain reason, because the reason for that is—if the Judge will ask me that——

3761 Q. Are you afraid it might incriminate you? A. It would not help the situation. It is something personal.

Q. Might it incriminate you? A. There is a personal matter in that, that is why he is not buying.

Q. Just personal? A. Yes.

The Court: Now listen to me: If any question is asked here, the answer to which might tend to convict you of a crime or degrade you in the community, you can decline to answer that question.

3762 The Witness: Yes, I can tell——

The Court: Whatever you may say here may be used against you anywhere.

The Witness: Because it is a personal credit situation there, I don't want to bring it up. I can tell you any time you want, personally; I will let you know what it is.

Q. Will it tend to incriminate you? A. It is just a credit matter, that is all it is. I don't want to discuss that in the open.

Mr. Rice: Then, your Honor, I should like an answer.

The Witness: You had better explain that to me.

The Court: Wait a minute.

The Witness: What do you mean by incriminate?

The Court: Incriminate means it might tend to convict you of a crime.

The Witness: Not for a crime, no; not for a crime. It is a credit matter which I do not want to bring in the open.

Mr. Rice: I then, your Honor, I am 3764
entitled to an answer.

Mr. Heller: Yes, I think the witness ought to answer.

The Witness: There is a lot of money involved in this thing.

The Court: Why should we advertise their business?

The Witness: That is the idea.

Q. All I am asking you now is whether or not it is not true that H. Ruben is buying his poultry in Newark today? A. There is a reason for 3765
that.

The Court: You can answer that.

The Witness: He is buying in Newark, but there is a reason.

Q. You don't want to tell the reason? A. I can tell that to the Judge, if he wants me to.

The Court: If you do not want to tell the reason, if it is a matter of credit, we won't force you to.

Q. Do you know the Kings Poultry Company? A. Yes.

3766 Q. They used to buy their poultry at West Washington Market before the Code, didn't they? A. Yes.

Q. And now they are buying in Newark? A. No, sir, I am selling them every day.

Q. They are buying in Newark? A. They are buying in New York.

Q. They are buying in Newark? A. I sell them poultry.

Q. Don't you know they are buying most of their poultry in Newark today? A. No, sir.

3767 Q. Do you know Jake Litvack and David Litvack and all the other Litvacks of the Kings Poultry Market? A. Yes.

Q. Isn't it true they are going to Newark to purchase their poultry today? A. It is not true.

Q. And that they have since the Code came into effect? A. I know they are buying some poultry there, but they are buying the bulk in New York.

Q. Don't you know they have been buying their poultry in Newark since the Code came into effect? A. I have heard they are buying some

3768 poultry in Newark, but they came back to New York.

Q. Do you know Meyer Oster? A. Yes, sir.

Q. He bought his poultry in New York before the Code? A. Yes, sir.

Q. Today he is buying in Newark? A. No, sir; I sold him the other day in New York, I sold him the other day.

Q. Just answer my question. Isn't he buying in Newark? A. I don't know if he is.

Q. You would not say that he is not? A. I would not say that he is not.

Q. Do you know Adelstein? A. Yes.

Q. Before the Code he bought in New York, did he not? A. Yes.

Q. From the commission men in New York? A. Yes.

Q. Today he is buying in Newark? A. Today he is buying in New York. I sell him every week, 30 to 40 coops of poultry practically.

Q. Today he is buying in Newark? A. No, sir, he is buying 95 per cent. of his poultry in New York.

Q. You know he is buying some of his poultry in Newark? A. I think he is buying a few coops in Elizabeth. 3770

Q. And the commission men in New York do not get any benefit from that? A. Naturally we do not.

Q. You do not like that, do you? A. As far as I am concerned, it does not make any difference to me.

Q. Do you know I. Frank, Ida Frank? A. Yes.

Q. Where does she buy her poultry? A. The only reason she don't buy it here is because she cannot get it here, we do not sell to her. We had trouble with her with credit. 3771

Q. Where did she buy at the time before the Code went into effect? A. She wasn't in business before the Code.

Q. Oh, she was not? Where is she buying today? A. She is compelled to buy outside of New York, on account of her credit standing.

Q. She is buying outside of New York? A. Only due to her credit standing.

Q. She is buying outside of New York? A. As far as I know she is buying outside of New York.

Q. How about Abe Frenzel? A. Yes.

3778 Q. He just happened to guess right, is that it? A. That is his business.

Q. I believe you testified on direct examination that quality has nothing to do with the price, is that right? A. Quality?

Q. Quality of poultry has nothing to do with the price? A. Quality always brings more money than average grade.

Q. Well, if you go into the chicken store of a consumer and you look at one very high quality bird, you pay more for that than you do for the
3779 low quality bird? A. Certainly.

Q. And if the retailers go to the wholesale slaughter house operators and get a lower quality of bird they pay less for it? A. Yes.

Q. And they pay more for the high quality bird? A. Yes.

Q. And where they do selective killing, they pay more for the selected poultry than they would for the run of the coop? A. They probably would have to, yes.

Q. So quality has an awful lot to do with price, doesn't it? A. Yes.

3780 Q. Now, you are familiar with the practices on the part of the shippers? A. Yes.

Q. On the part of the packers? A. Yes.

Q. And the packers who ship their poultry to the New York market? A. Yes.

Q. You are familiar with their practices? A. I only know from hearsay and what is what.

Q. You know, don't you, that the packers make a practice of dumping the diseased and inferior poultry on the New York market? A. That is not true, no such thing as diseased poultry.

Q. That is common knowledge in this industry, isn't it? A. That is not true.

3781

Q. And anybody who knows anything about the packers knows that the packer dumps all his unfit poultry on the New York market? A. That is not true.

Q. You never even heard of that before? A. I know that the shippers ship poultry to New York, maybe infefior poultry, but nothing diseased.

Q. You never heard that the packers ship their inferior poultry to the New York market? A. They might ship the straight run.

3782

Q. They dump their inferior poultry on the New York market, don't they. A. Maybe the undesirable birds, yes.

Q. The undesirable birds? A. Yes.

Q. And what they cannot use they send to New York? A. But that doesn't mean it is diseased poultry.

Q. You admit that it is inferior poultry? A. Inferior poultry can be used.

Q. You don't like the Code any more, do you? A. Right now?

Q. Yes. A. From past performance I cannot like it.

3783

Q. Well, why don't you resign from the Advisory Committee if you don't like the Code? A. I don't think it is right to resign; I am not here to run.

Q. What do you want to do, do you want to sit in there and listen to what is said? A. I am not just sitting in to listen to what is said. I paid my money; why should I resign?

Q. Well, why don't you let somebody sit in there who will be loyal to the Code? A. Who is not loyal to the Code?

Q. You are loyal, are you? A. Yes.

3784 Q. And you would not go around to people telling them what happened at the meetings? A. It is my duty to tell them what is what. That is what I am there for, to notify what is going on at all the committee meetings. We discuss everything, and whenever we want to have anything done we call on Mr. Peterson too.

Q. Didn't you say that the meetings were sececret? A. Behind closed doors, but not secret. We have minutes and everything is recorded.

3785 Q. Now, do you want to change your testimony as to whether or not you told about an effort to employ Mr. Dale in an effort to assist me in the trying of this case—do you want to change your testimony about that? A. I don't want to change any testimony at all.

Q. You stick to that, do you? A. Yes.

Q. Are you familiar with all Code provisions? A. Yes, I have gone through them with Mr. Peterson and the rest of the Advisory Board.

Q. And you are familiar with Article 3, Section 2, relating to expected shipments? A. Yes.

3786 Q. And you are familiar with the rule reading as follows: "At or about noon on Tuesday of each week every member of the industry receiving live poultry in carloads, truck loads, exceeding 3,000 pounds, or express shipments exceeding 1,500 pounds, shall make to the Code Supervisor a written report, stating the amount of his expected shipments for the balance of the week, the actual number of cars expected, and such other information relating to receipts or kind of poultry, as the Code Supervisor shall require. No member of the industry shall sell, unload or deliver poultry received during the week which has not been reported as required above, except as

provided for in approved rules of the Code Supervisor." Are you familiar with that? A. Yes.

Q. And that means that you must list all your expected receipts? A. We list only our freight.

Mr. Heller: I object to the question, if your Honor pleases, the rule speaks for itself.

The Witness: We list our freight receipts, but they do not enforce it so far as the others go. 3788

Q. You don't like the enforcement of that provision, do you? A. I like it, I think it is the finest thing we ever have done.

Q. It doesn't let you fix the prices, does it? A. We don't fix any prices.

Q. And it doesn't let you fix prices? A. That has nothing to do with the market at all.

Q. Do you know what the purpose of that provision is? A. Yes.

Q. What is it? A. That when we make a price on a Monday we should know the available supply and know what we are talking about. For instance, we know we have 150 cars to offer and we should not go about saying we have more or less, we should know just about what we have to offer. 3789

Q. And when you expect a car of poultry you must list it with the Code Authority? A. Yes.

Q. By Tuesday? A. Yes.

Q. And if you don't list it by Tuesday you cannot sell it that week, is that right? A. That is right.

Q. And do you know what the practice was in the industry prior to the adoption of that Code provision? A. Yes.

3790 Q. Was it not the practice, prior to the adoption of the Code provision, for a commission man to misrepresent the amount of their expected shipments? A. No, sir.

Q. It was not? Wasn't that the evil practice which the Code provision was designated to prohibit? A. We are commission men and we are compelled to take whatever they ship us, we receive shipments from all over the United States.

3791 Q. I asked you wasn't that the evil practice which the Code provision was designed to prohibit, yes or no? A. I want to answer.

Q. Yes or no. A. I want to answer you.

Q. Well, you answer yes or no, and then give your explanation. A. Yes. This plan was with the thought in mind that we should offer for sale only that which we listed by Tuesday, and we would have our available supply for the week, but it has nothing to do with express shipments.

3792 Q. But before the Code provision was adopted requiring you to list expected shipments, the commission man who had a load of poultry on hand could represent that he was not expecting any receipts, couldn't he? A. No, they would not do that.

Q. Oh, they wouldn't do that? A. No.

Q. And a commission man that had no poultry on hand could represent that he had a load of poultry coming in? A. It was never done.

Q. He could manipulate the price? A. No.

Q. And hurt the slaughter house man? A. No.

Q. And you commission men did not like that provision? A. Sure we like it, sure we like it; we had it on our exchange before.

Q. And that was in the good old days when you could fix prices? A. We never fixed prices.

Q. You never allocated any customers? A. We never did that.

Q. And you were not among the commission men that were convicted a number of years ago for price-fixing? A. No, sir, I was not in that.

The Court: I must instruct the jury that we are not trying that other case. The question as to whether an individual has been convicted of a crime or not can 3794 be asked, and I will afterwards instruct you gentlemen what that means and how it can be used.

Mr. Rice, you can ask each witness if they have been convicted of a crime, but do not keep harping about another prosecution.

Q. You are familiar with the Code provision prohibiting the sale of poultry unfit for human consumption? A. Yes.

Q. Are you familiar with the practice which 3795 existed prior to the Code on the part of commission men, to give a weight allowance in lieu of culling? A. Yes.

Q. You are familiar with that? A. Yes.

Q. And that practice existed? A. That practice would be——

Q. Did it exist, yes or no? A. We never sold culls; I want that distinctly understood.

Q. Did the practice of giving a weight allowance in lieu of culling exist prior to the Code? A. No.

Mr. Heller: May we have the counsel's definition of what he means by a cull?

3796 The Witness: I want it distinctly understood that no poultry unfit for human consumption is sold. It is all killed before we have access to the car. The inspectors go through and kill all that poultry before we get the car. We did make allowances for poor fowl, but we do not sell culls.

Q. What sort of allowances would you make? A. We would give them a pound to a coop; it
3797 was a custom in the industry. If a man bought 30 coops of fowl we would give him 30 pounds off, as a custom.

Q. And sometimes would you give him two pounds off the coop? A. I never gave more than one pound.

Q. Other commission men would sometimes give two pounds off a coop? A. I don't know what they done.

Q. You don't know the practice on the part of the other commission men? A. Yes.

Q. All you know is your own business? A.
3798 Yes.

Q. Are you familiar with the practices of the other commission men? A. Yes.

Q. And was it not the practice to give at least two pounds off per coop, which was a weight allowance? A. I know that they only gave one pound per coop.

Q. And that practice was called the practice of giving a weight allowance in lieu of culling? A. Not culling, in lieu of some poor fowl. It was a custom.

Q. And you said the conditions in the live poultry industry have been very bad in the past year, is that right? A. Yes.

Q. And conditions in other industries have been bad? A. Not as bad as our business.

Q. That is right. Now, your business has been worse off than other businesses, is that right? A. Yes.

Q. And you are aware there has been an economic depression? A. Yes.

Q. A national economic depression? A. Yes.

Q. And you are aware of efforts of the administration to correct conditions in the industry generally? A. Yes. 3800

Q. In the poultry industry? A. Yes.

Mr. Rice: That is all.

Redirect examination by Mr. Heller:

Q. Why have conditions been worse in the poultry industry? A. Well, it is a hard question to answer, but the only thing, in my experience, actual experience, in the last six months they have seen that it has gone probably from bad to worse, it is almost unexplainable, I cannot understand why, but we have an unbelievable condition right now in the poultry business, and 3801 I am sorry to say that the Code has not done us any good; it has just put another assessment upon us.

Q. So the effort that counsel speaks of, of the attempts of the administration, has had no effect whatsoever on your busniess? A. Conditions are worse since the Code.

Q. Now, you don't want these efforts by way of an assessment? A. Right now, no.

Q. If that is all you can get out of the Code you don't want it? A. I have talked to Mr. Peterson and I asked him to have the assessments reduced, but to no avail. I think it is an outrage, they are entirely too high——

3802

The Court: No, just a minute; we are not trying that question, of whether the assessments are too high or not, here.

Q. Is there anything mysterious about this Mr. Ruben that buys in Newark? A. That is a personal matter which I would——

Q. Does he owe you any money? A. I do not want to bring that up——

Q. Does he owe you seventeen thousand dollars? A. I refuse to answer that.

3803

Q. You do not want to say that? A. No, sir.

Q. But it is a personal matter? A. It is a personal business matter between me and Harry Ruben.

Q. Nothing that will tend to send you to jail? A. No.

Q. You haven't done anything against him? A. No, not at all.

Q. You wouldn't say he robbed you, in fact, of seventeen thousand dollars? A. No; he is all right; he is a fine man. I have nothing against him.

3804

Q. But it is a credit situation? A. Yes.

Q. About how many cars go to Newark a week? A. Cars go to Newark?

Q. Yes. A. I would say about twelve or fifteen cars a week, I think.

Q. How many cars are sold in New York City at the present time? A. Including freight stuff, close on to 200 cars.

Q. 200 cars a week? A. Yes, including express.

Q. These other customers that you do not sell to, is that because of a credit situation? A. Yes, sir.

Q. You have a right to choose your own customers? A. Yes.

Q. To whom you will sell, and whom you will not sell to? A. Yes.

Q. And because you do not want to extend credit to anyone you do not have to, is that correct, or not? A. Yes.

Q. You haven't committed any crime? A. No.

Q. You do not owe anybody any money? A. No.

Q. You haven't——

3806

Mr. Rice: I object to his cross examining his own witness.

Mr. Heller: I am not cross examining him.

Mr. Rice: It sounds like it.

The Court: I know, that is all very well, but you might let him testify.

Mr. Heller: That is all.

Recross examination by Mr. Rice:

Q. Just a moment. Does Schechter owe you any money? A. No, sir. 3807

Q. Do they deal with you? A. Yes, sir.

Q. Did they owe you any money last night? A. Last night. I don't know; I don't think they owe me anything; I don't think they bought anything this week.

Q. They deal with you, do they? A. Yes.

Q. Do they deal with you today? A. Today?

Q. Did they? A. I don't know; I haven't been up there today, I can't tell you that.

Q. You sell to Schechters? A. If they want stuff I give it to them, yes.

Q. You say you were for the Code at one time? A. Yes.

Q. Is he buying outside of New York today? A. Only for credit reasons.

Q. Only for credit reasons? A. Yes, he owes me money. He hasn't paid his bills.

Q. You would like to keep him here as a customer? A. No, I would not.

Q. You would like to tie him down to New York? A. If he paid me my bills.

Q. Before the Code he bought from you? A. Before the Code?

3773 Q. Yes. A. Sure, if I sold him by credit; if I sold him by credit, he would buy from me today.

Q. There are about 20 large wholesale slaughter house operators who bought from New York commission men before the Code, who are buying now in Newark today, aren't there? A. Yes, and I can go on record by saying only for credit reasons.

Q. Let us go back to these meetings of the Code Advisory Committee. You say that you are a loyal member of the Committee? A. Yes, sir.

Q. You hear everything that goes on there? A. Yes, sir.

3774 Q. Those meetings are behind closed doors, aren't they? A. Yes, sir.

Q. They are secret meetings? A. Yes, sir.

Q. Nobody else is admitted? A. Yes, sir.

Q. Where you here the other day when Mr. Heller examined Mr. Dale, the associate counsel? A. No, sir.

Q. You know he examined him, don't you? A. No, sir.

Q. You know he asked him about the fee which he was offered by Mr. Peterson? A. No, sir.

Q. To help in this case? A. No, sir.

Q. Didn't you as a matter of fact tell Mr. Heller or one of the Schechters that this matter was taken up in the Advisory Committee of the Code Authority? A. No, sir.

Q. You did not know who told it? A. No, sir.

Q. It would not be you by any chance? A. No, sir.

Q. You talked this matter over with Mr. Heller before testifying? A. No, sir.

Q. About Dale's fee? A. No, sir.

Q. You did not discuss it? A. No, sir. 3776

Q. Did you discuss any of your testimony with Mr. Heller before testifying? A. No, sir, never saw Mr. Heller before testifying, too.

Q. You talked with nobody about your testimony before testifying? A. No, sir.

Q. Don't you think Mr. Heller was taking a chance putting you on the stand without talking to him first? A. That is his business.

Q. That is his business? A. Yes.

Q. You mean to say you did not talk with anybody about your testimony prior to taking the stand? A. Yes, sir. 3777

Q. You know that there is nothing wrong about talking to your attorney, or the defense attorney, before taking the stand? A. I have not discussed this matter with anybody. I haven't seen Mr. Heller. I do not know Mr. Heller.

Q. You have not discussed it with anybody? A. No, sir.

Q. And you had no idea that Mr. Heller was going to ask you about Dale's fee? A. No, sir.

Q. That just came out of the clear sky? A. Yes, sir.

Q. Did Mr. Heller know you attended that meeting? A. I don't know.

3808 Q. Why were you for it? A. I thought it would help the industry.

Q. Why did you think it would help the industry? A. Everybody said Codes were good things, and we wanted to give it a trial.

Q. Did you have any reason for your own? A. Well, everybody said it was good for the industry, and whatever is good for the industry is good for me.

Q. Why did you think it was good for the industry? A. Everybody said, the Government
3809 people were all talking about Codes, they thought it would help the situation, and anything that helps the situation helps me.

Q. Did you pass your own judgment on it at all? A. Well, we have had our meetings, we have had our Association meetings, and we thought it was the right thing to do, and if it could help us, we wanted it.

Q. Why did you think it might help you? A. Because business was bad.

Q. Yes, and you wanted to improve business, is that it? A. That is right.

3810 Q. You thought it would improve business? A. That is right.

Q. You thought the Code might help? A. Yes, sir.

Q. You thought that the prohibition of unfair competitive practices on the part of the slaughter house operators would improve the business, did you not? A. Yes, sir.

Q. And that is why you were for the Code? A. Yes, sir.

Q. Now, wouldn't the Code benefit the industry if it were thoroughly enforced? A. Well, it seems that it hasn't been enforced, that is all that I can tell you.

Q. That is your objection? A. It hasn't been enforced, yes.

Q. It hasn't been enforced? A. Yes, sir.

Q. People haven't been prosecuted for violating the Code, is that right? A. People haven't been prosecuted?

Q. The Schechters are the first ones in the industry that have been prosecuted for violating the Code, is that right? A. I will tell you——

Q. I say, is that right, do you know anybody else that has been prosecuted? A. The only one 3812
I know that has been prosecuted is the Schechters.

Q. If the Code were enforced do you think it might help? A. It doesn't seem practicable, it seems the Code just can't amount to anything, it doesn't have anything practical to it, it doesn't have any backbone behind it; the whole thing is impracticable.

Q. You think it has no teeth to it? A. I do; there seems to be nothing to it, no enforcement behind it, and it isn't practical for the industry.

Q. You say there is no enforcement behind it? 3813
A. No enforcement behind it, and there isn't anything practical about it.

Q. That is your objection to it? A. Yes, sir.

Redirect examination by Mr. Heller:

Q. Were the Schechters to kill straight would that give the industry any benefit? A. Oh, no.

Mr. Rice: I object to that as not proper redirect examination.

The Court: What was it?

Mr. Heller: I said if the Schechters were to kill straight would that give any benefit to the industry.

Q. You sell your coops straight anyhow, do you not? A. Yes, sir.

Q. And they have to take them that way? A. That is right.

Q. You could not sell them any more than they need? A. That is right.

Q. They take everything that you give them?

3815 A. Yes, sir.

Q. What transpires in their slaughter house has nothing to do with your business? A. That is right.

Q. Are you a partner of Mr. Peterson? A. A partner?

Q. You are not a partner, are you? A. No, sir.

Q. There is nothing secret about these meetings, is there? A. No, no secret.

Q. You are familiar with Provision J of the Code that provides that "nothing contained in

3816 this Code shall constitute the members of the Industry Advisory Committee and Code Supervisor partners for any purpose?" You are familiar with that provision? A. Yes.

Q. You are familiar with this one, "Nor shall any member of the Industry Advisory Committee and/or the Code Supervisor be liable in any manner to anyone for any act of any other member, officer, agent or employe of the Industry Advisory Committee and/or the Code Supervisor." You are familiar with that one?

Mr. Rice: Just a moment, this is not proper at this stage.

The Court: I don't know you asked him about divulging secrets.

Mr. Heller: I am going to show there weren't any.

Mr. Rice: But your Honor, that was on cross examination.

The Court: I know, but he hasn't left the stand, and I am going to have him bring him back later.

Q. Are you familiar with this provision, "Nor shall any member of the Industry Advisory Committee and/or the Code Supervisor be liable in any manner to anyone for any act of any other 3818 member, officer, agent or employe of the Industry Advisory Committee and/or the Code Supervisor"? You are familiar with that? A. Yes, sir.

Q. Are you familiar with this one: "Nor shall any member of the Industry Advisory Committee or the Code Supervisor, exercising reasonable diligence in the conduct of his duties hereunder, be liable to anyone for any action or omission to act under this Code, except for his own willful malfeasance or nonfeasance"? A. Yes.

Q. You are familiar with those provisions, are 3819 you, of the Code? A. Yes, sir.

Q. You were never told not to divulge what occurred at these meetings, were you? A. As a matter of fact we were told to go back and talk it over with our associations.

Q. There was no secret about it, was there? A. No, sir.

Q. You are entitled to representation there? A. I represent the commission merchants on this Committee.

Mr. Heller: That is all.

3820 *Recross examination by Mr. Rice:*

Q. Nobody told you to divulge that what happened at the meeting with regard to the employment of Dale, did they? A. What is that?

Q. Did anybody tell you could divulge what was said at the Advisory Committee meeting with regard to the retaining of Dale? A. Nobody told me anything; anything that happens at those meetings I bring back to the association and talk it over with them.

3821 Q. Did you bring that information back to your association? A. I know that we discussed——

Q. Did you bring that information in regard to Dale back to the association? A. I know we discussed Loeb at our meeting.

Q. You did discuss it? A. Loeb, yes, at the commission merchants' meeting we had.

Q. You did reveal the fact that the Advisory Committee had brought up the question of retaining Dale to help me in this case? A. Yes, we discussed that at the commission mem-

3822 bers' association.

Mr. Heller: That is all.

Mr. Rice: One more question.

The Court: Is there any section of the Code that prevents them from divulging secrets?

Mr. Rice: No, your Honor. This is simply for the purpose of testing this witness's credibility.

The Court: I wanted to know if there was any such Code provision.

Mr. Rice: No, we do not contend that there was.

The Court: I just asked if there was any.

Q. Mr. Kastein, do you remember the first week that the Code was in effect? A. Yes, sir.

Q. Do you remember the operation of the Code the first week? A. Yes, sir.

Q. Do you remember the meeting of approximately 800 people on May 15, 1934, when the Code provisions were discussed? A. Yes, sir.

Q. At the Code Authority office? A. Yes, sir.

Q. Or in the auditorium in the Code Authority 3824
Building? A. Yes, sir.

Q. Did you remember that? A. Yes, sir.

Q. Do you remember there was compliance with the Code for one week after the Code went into effect? A. Yes, sir.

Q. Do you remember that the industry prospered for that one week? A. Yes, sir.

Q. It had a good effect? A. It seemed to have a good effect for one week.

Mr. Rice: That is all.

Redirect examination by Mr. Heller: 3825

Q. Was that a holiday week? A. I do not remember whether it was a holiday week or not; I remember it lasted for such a little time.

Mr. Heller: That is all.

(Witness excused.)

Mr. Heller: If it pleases your Honor, I would like to call these two people who killed the chickens, and we need a Jewish interpreter. Counsel says that he can get someone, if I will pay him for it. Of

3826 course, I cannot do that. I would like to choose anyone in the room who is agreeable to him.

Mr. Rice: That is not quite right. I am not getting anybody for the defense.

The Court: Do not take this up before the jury. Agree amongst yourselves.

Mr. Rice: I suggest Mr. Pack.

Mr. Heller: Take anyone in the courtroom, and I am agreeable.

3827 Mr. Rice: Oh, no, I want an official interpreter. I don't want any member of the industry.

The Court: What? There is no official interpreter in the United States Courts.

Mr. Heller: I will take Mr. Forsmith.

The Court: Do not discuss this in front of the jury, gentlemen.

Mr. Heller: May we have a five-minute recess, and we will discuss it then?

The Court: It is so near the time, why don't you get together and agree on somebody?

3828 (Discussion between counsel off the record.)

Mr. Rice: If there is any disinterested person in the building here, I would prefer him, rather than have any interested person.

The Court: I rather think that is so. If you could agree amongst yourselves—Mr. Heller, are you content to accept Mr. Rappaport, who is a member of the bar?

Mr. Heller: I certainly am, but he may not understand some of the terms. Suppose we let Mr. Forsmith stand with him?

The Court: Arrange it amongst yourselves to suit yourselves.

(Discussion between counsel off the record.)

The Court: I understand that the defense accepts Mr. Rappaport as interpreter?

Mr. Heller: Yes, sir.

(Morris Rappaport duly sworn as an interpreter.)

3830

HELIL GERSHON, called as a witness on behalf of the defendants, having been duly sworn, testified as follows through the interpreter:

Direct examination by Mr. Heller:

Q. What is your occupation? A. I am a slaughterer.

The Court: So we can hear you, speak up. And you speak up in Hebrew so they can check, if they want to. Speak up loud, Mr. Rappaport. 3831

A. (Continuing.) I am a slaughterer.

Q. Where are you employed at the present time? A. I work for the Schechter Brothers.

Mr. Rice: I object to any further examination of this witness. He has been in court during the trial.

Mr. Heller: When was this?

The Court: I did not see him.

Mr. Rice: He has been identified by several of the people at our counsel's table.

3832 Q. Have you been in court before day? A. I was never here before.

Mr. Rice: He was in Court Tuesday of this week, I was informed.

Mr. Heller: He means it was Schechter's father, who was in court. He looks like him. He is a man with a beard.

The Court: I do not think he is the same man.

Mr. Rice: He looks familiar to me, your

3833 Honor.

The Court: My notion was that the beard extended a little further down.

Mr. Rice: May I state, your Honor, that several days ago two shochets were seen in court and somebody at our counsel table inquired who they were and were informed they were the two Schechter shochets.

The Court: I do not know. If he says he was not here, I will take that.

Mr. Heller: I happened to see the two gentlemen. He is not one of them.

3834 The Court: Speak a little louder, because they want to check up on your Hebrew.

The Witness: Yes.

Q. What has your training been? A. I have always been a slaughterer.

Q. For how many years? A. For 20 years.

Q. Do you have to have any qualifications for being a shochet?

The Court: I cannot hear you. If you will speak a little louder, so we can hear your Hebrew.

A. I have the qualifications which are necessary according to the——

The Witness (in English): Jewish law.

A. (Continuing through the interpreter.) Jewish law in order to be a slaughterer.

Q. How long have you worked for the Schechters? ? A. 23 years——

The Witness (in English): Months.

A. (Continuing through the interpreter.) 3836
Months.

Mr. Heller: Months.

The Court: If he understands English, why does he need an interpreter?

Mr. Heller: He may understand a few words.

The Court: I think we will try him without an interpreter. He has been answering here. I have been listening to him and he was answering in advance.

Q. Can you speak English well? A. A little. 3837
It is better if I talk in Jewish and this man interprets here.

Q. Can you speak English well? A. (Without the interpreter.) A little, but for the benefit of the Judge when I talk in Jewish I can explain more.

Q. How long have you worked for the Schechters? A. 23 months, maybe a week more, maybe a week less.

Q. You are still working there? A. Yes.

Q. What time do you get there in the morning? A. Seven o'clock every day until seven—

3838 on Tuesday I come the same, on Thursday I come five to five.

Q. Every day from seven to seven? A. Excuse with me please. There are two shochets. The first week one comes from eight or eight and a half until nine——

The Court: Now just a minute, you better take it by days because he is not there every day.

Mr. Heller: Yes, he is, your Honor.

3839 Q. On what days of the week are you there, what hours are you there on Monday? A. On Monday from seven to twelve.

Q. Tuesday? A. The same thing.

Q. Wednesday? A. The same thing.

Q. Thursday? A. Five to five.

Q. Friday? A. From six to twelve.

Q. Saturday? A. One hour in the night because the Jewish people——

Q. Sunday? A. Nothing, sometimes if it is important for half an hour.

3840 Q. And does all of the slaughtering take place between the hours you have stated? A. All the slaughtering takes place only between those hours.

The Court: On Friday what was that, how long?

The Witness: From six to twelve.

Q. And after that there is no more slaughtering? A. No.

Q. And you have another rabbi that stands with you? A. Yes.

Q. And his hours are what on Monday? A. Well, when I stay until twelve, by eight and a half or nine o'clock he goes home.

Q. And from what time in the morning until what time on Monday? A. Well, after the busy time——

The Court: You mean after twelve o'clock?

The Witness: No after eight o'clock, maybe eight and a half, after the busy time he goes home.

Q. On Tuesdays the same thing? A. The same thing.

3842

Q. On Wednesday? A. The same thing.

Q. Thursday? A. All day.

Q. Now both of you stay all day Thursday? A. Yes, from five to five.

Q. And Saturday night? A. Half an hour.

Q. The other man too? A. The same thing. One time I will go home and he will stay a couple of hours.

Q. Were you in the Schechters' place of business every day during the months of May, June and July? A. Yes, sure, always.

Q. And do you know whether the Schechters sold diseased chickens during the months of May, June and July? A. Diseased?

3843

Q. Yes. A. Never.

Q. And would you kill a diseased chicken, would you slaughter a diseased chicken? A. No, a diseased chicken does not get killed.

Q. Did you see the Schechters sell any of these chickens? A. No.

Q. And could you slaughter a diseased chicken? A. No, sometimes, when the chicken is diseased we cut the throat and throw it away.

Q. And where do you throw it? A. Into a barrel.

3844 Q. Now how often can that happen? A. Sometimes in two weeks, sometimes in three weeks.

Q. And whenever you see that the head is black you say you cut the throat and throw it in the waste basket? A. Sometimes when the chickens appears black, it is brought to me and I cut its throat and I throw it into the barrel.

Q. And that barrel is a waste basket? A. Yes.

Q. Do you know each and every one of the Schechters sitting at the table? A. Sure I know them.

3845

Q. And do you know their father? A. Yes.

Q. How long have you known them? A. About a couple of years, 9 years, 10 years.

Q. Do you know the neighbors that know them? A. Sure.

Q. And have you ever heard anything said against them? A. Very nice.

Q. Do you know what their reputation is for being law-abiding citizens? A. I know they are reputed to be fine people.

3846 Q. Do you remember in the month of June, seeing an inspector there with a badge? A. Yes, sir.

Q. Was he permitted to be there?

Mr. Rice: I object to that as too indefinite and also on the ground it calls for a conclusion, as to whether he was permitted to be there.

The Court: Objection sustained.

Mr. Heller: Exception.

Q. Did you see him there in the month of June? A. Yes.

Q. What day, was it June 23rd? A. Yes.

3847

Q. On how many days did you see him there? A. A couple of days.

Q. And do you know him, who he was? A. If I see him I should recognize him.

Q. Do you know his name? A. No.

Q. And did he have something on the lapel? A. He has a badge, a Government badge, and we joked and smoked cigars together. I wanted to make him a Jew too.

Q. Do you know Mr. Forsmith? A. Yes, sure.

3848

Q. Is he here in court? A. Sure right there (indicating Mr. Forsmith).

Q. Was he there one time when Dr. Ives was there? A. The same time he was there.

Q. Do you remember any of the Schechters lifting a hatchet? A. Wus, hatchet—what is the matter with you—what do you think they are, murderers?

Mr. Rice: I move that the answer be stricken out.

The Court: Strike it out.

3849

Q. Did you ever see them have a hatchet and threaten to kill him? A. I see they have a hatchet to open coops.

Q. Did you ever see him strike him? A. No, no, no, he is no murderer.

Q. Did you ever hear him threaten to kill him?

Mr. Rice: I object, your Honor, as calling for a conclusion.

The Court: He can tell what they did or he can tell what he heard said.

The Witness: No.

Mr. Rice: I move the answer be stricken out.

3850

The Court: Strike it out.

(To witness): Did you hear him say anything to him or do anything with the hatchet?

Q. Did you see him move his hand toward him with a hatchet? A. No, ah, no, God forbid.

Q. Do you remember whether any discussion took place about a ticket? A. That I did not hear.

3851

Q. Did you see any of the Schechter boys stop Mr. Forsmith from leaving the place? A. No, I did not see that.

Q. Did that happen?

Mr. Rice: I object your Honor.

The Court: Yes, how can he say whether it happened if he did not see it. I will sustain the objection.

Mr. Heller: Exception.

Q. Were you near them? A. I stood in their presence and I heard them talk.

3852

Q. And did you see him then put up a hand against him? A. No, I did not see that.

Q. Did you see him stand near the outside, so that he could not get out? A. No, I did not hear such a discussion.

Mr. Heller: That is all.

Cross examination by Mr. Rice:

Q. Do you remember the inspector with the badge? A. Yes, sir.

Q. Would you recognize him if you saw him again? A. If I see him——

Q. Look around the court room and see if you see him? A. I can't tell.

Mr. Rice: Will this gentleman here stand up? (A man in the court room stands.)

Q. Is this the man? A. I can't see.

Q. Come over here and take a look at him, is this the man here? A. Is that the man?

Q. Is that the man? A. That is him.

Q. That is him? A. I don't know that man.

Q. Will you take the stand again? A. All right.

Q. You said that was the man, didn't you? A. 3854
No, on the contrary, I seen him a couple of times, a couple of months, and I don't remember——

Q. You are not sure whether that is the man or not? A. Maybe yes, maybe not.

Mr. Rice: May I have this gentleman's name? The gentleman's name is Merlis.

Q. What made you identify that man back there? A. It appeared to me that he resembled that man, but I have to tell the truth, and I am not sure, 3855

Q. You are not sure now?

The Court: Would you mind coming up here? I want the jury to see him.

(Mr. Merlis comes forward and faces the jury.)

The Court: Just face the jury and let the jury see you, that is all. Thank you very much.

The Witness: I think the other gentleman was taller.

The Court: You think the other gentleman was taller?

3856 *Helil Gershon—By Defts.—Cross*

The Witness: Yes.

Mr. Rice: All right, we will let it go at that.

Mr. Heller: Will counsel bring him and sit him in the court room and see if he can pick him out?

Mr. Rice: All I wanted to do is to see whether this witness would pick out the first man that I picked out.

Q. You work for the Schechters, don't you?
3857 A. Yes, sir.

Q. You work for them today? A. Yes, sir.

Q. You have got a good job? A. Very good.

Q. What do you earn a week? A. Fifty dollars mit chickens.

Q. Fifty dollars in chickens? A. Yes. sir.

Q. Don't you earn more than that? A. No, not more.

Q. There are a lot of shochets out of work, aren't there? A. I am not an executive, I don't know.

Q. Don't you know there are a lot of shochets
3858 out of work? A. I don't know, because I am not an executive.

Q. Did you ever hear of the Vaad Shochtim Avis? A. Yes, I have.

Q. That is another union, isn't it? A. I do not concern myself with those matters; I am not a politician.

Q. That is an association of other shochets, isn't it? A. I do not know; I mind my own business.

Q. They pay ten cents a month dues, don't they? A. I don't know; that is not my business.

3859

Q. Or ten cents a week dues? A. I work there all day and make my money and go home and sleep.

Q. You know there are 150 shochets out of work—— A. That is not my business.

Q. In that union that are out of work? A. I don't know nothing; that is not my business.

Q. Don't you know that there are a lot of shochets out of work? A. I don't know. I know what pertains to my business.

3860

Q. You want to keep your job? A. I want to have my job, sure, like you want to have your job.

Q. Don't you get sixty-five dollars a week? A. One time.

Q. At one time? A. About a year before.

Q. You don't work very many hours a day, do you? A. The same thing was today. I work as much as is necessary.

Q. You were working at the Schechter Market day before yesterday, weren't you? A. Yes.

Q. Wednesday? A. Yes.

Q. Killing chickens? A. Yes.

3861

Q. Slaughtering chickens? A. Yes.

Q. According to the Jewish dietary laws? A. Absolutely.

Q. Absolutely? A. Sure.

Q. You do not kill anything for sale that isn't fit for human consumption, do you? A. With consumption? I am not a doctor. We do not slaughter dead chickens.

Q. You kill only the good chickens, don't you? A. We do not kill any sick chickens.

Q. You kill only the good chickens? A. Me kill everything.

Q. You kill everything with a head on? A. The Jewish law say kill every chicken that is

3862 good, according to the Jewish law we have a right to slaughter any live chicken.

Q. Do you know Rabbi Wise? A. Yes, sir.

Q. He is really a shochet, isn't he? A. Shochet and rabbi, too.

Q. Do you know a Shochet Schussman? A. Schussman? I don't know. Is that his name?

Q. Schussman. A. I don't know who you refer to. How do you spell it?

Q. Schussman, S-c-h-u-s-s-m-a-n, that is what I have here? A. I do not know.

3863 Q. You know the shochets that were working at the Schechter establishment day before yesterday? A. I don't know the name, I do not remember the name; he was a tall man.

Q. You say you were killing chickens there last Wednesday, day before yesterday? A. Yes.

Q. Do you remember Samuel Cohen, a workman—— A. Yes. (In English.)

Q. Was in the place on Wednesday after he testified here?

Mr. Heller: What has this to do with

3864 it? Does counsel want to know whether Sammy Cohen is still there? Yes, he is there.

Mr. Rice: No, that is not it. I am simply attacking his credibility.

Mr. Heller: What has that to do with credibility?

The Court: They are charged here with a certain specific offense.

Q. Samuel Cohen was working with you in the place last Wednesday? A. (No answer.)

Mr. Rice: May I have an answer?

A. (In English) Never mind; I am excited. I don't remember correct.

Q. Just calm yourself. A. (In English) I don't remember.

The Court: Wait a minute. Just think. Now, Wednesday, that was two days ago. Stop and think.

Q. Thursday is the big day? A. (In English) Yes, yesterday.

Q. Now, day before yesterday, Wednesday. 3866

The Court: Was Cohen there that day, Sam Cohen?

The Witness (through interpreter): I don't remember.

Q. You don't remember? A. (In English) No.

Q. Have you seen Cohen there that week? A. Yes, yes.

Q. You have seen him there all week? A. Yes.

Q. Isn't it true that last Wednesday Samuel Cohen told you that a chicken was going—— 3867

Mr. Heller: Wait a minute, counselor. I object to what Sam Cohen said.

Mr. Rice: I withdraw it.

Q. You say that you have never slaughtered unfit chickens for sale?

The Court: Unfit does not mean much. You mean unfit for human consumption.

Mr. Rice: Yes.

Q. Unfit for human consumption. A. (Through interpreter.) I am not a doctor and it is hard

3868 for me to determine the condition of a chicken, but when it happens that a chicken appears sickly and black around the neck, I cut its throat and throw it into the refuse. (In English) That is right.

Q. Didn't you slaughter chickens last Wednesday that were unfit to eat?

Mr. Heller: I object to that, and I move for a mistrial. Counsel has no right to do that. He has done it right along.

3869 The Court: Sustained. I have warned you on that. I sustain the objection. We are not going to have any other offenses brought in here that are not alleged in the indictment.

Mr. Rice: If your Honor please, may I state the grounds——

The Court: No, I do not want you to state it before the jury. Too much is stated already. That will not be permitted.

Mr. Rice: Very well.

3870 The Court: You cannot charge them with other offenses. There may have been a million things surrounding it. They may not have been there, but if they were there they are not charged with it here. The jury will disregard it. Ask him questions, but you cannot ask him to state some offense that has not been alleged in this indictment.

Mr. Rice: May I state that this witness was asked, on direct examination, whether he ever slaughtered any unfit chickens, and I merely propose to show——

The Court: I understand, but if you keep on, Mr. Rice, you will show too much in a few minutes.

Q. Now, from May 16th up to July 26th, 1934, did you ever see any unfit chickens in the Schechter premises?

Mr. Heller: Unfit for human consumption?

Q. Unfit for human consumption? A. I have never seen any unfit chickens. When one does occur, that appears sickly, as I said before, I cut its throat and throw it into the barrel. 3872

Q. You cut its throat and throw it into the barrel? A. Yes, though oftentimes—the Schechters oftentimes bring to me a chicken which appears sickly and black and I cut its throat and throw it into the barrel.

Mr. Rice: That is all.

Mr. Heller: That is all.

(Witness excused.)

The Court: We will take a recess until two o'clock P. M. 3873

Gentlemen of the Jury, do not discuss this case among yourselves or allow anyone to discuss it with you; keep your minds open until the case has finally been submitted to you. Be back here at two o'clock sharp.

(Recess until 2 P. M.)

3874 *Joseph Weisman—By Defts.—Direct*

(Met pursuant to adjournment at 2 P. M.; present as before.)

JOSEPH WEISMAN, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. Heller:

Q. Rabbi Weisman, are you employed by the defendants, the Schechter Brothers? A. Yes.

3875 Q. At what address? A. 52nd Street, Brooklyn.

Q. How long have you been working for them? A. About twenty-two or twenty-three months; since the month of February.

Q. And you also are a member of the union? A. Yes.

Q. The same as your other co-shochet? A. Yes.

Q. And what do you get a week? A. Forty dollars a week.

Q. And you have been at the place of business every day during the months of May, June and

3876 July of this year? A. Yes, every day.

Q. What hours? A. On Monday from seven until twelve.

Q. Tuesday? A. From seven until twelve.

Q. And Wednesday? A. The same.

Q. Thursday? A. Five to five.

Q. And Friday? A. Six to twelve.

Q. Saturday night? A. One hour or two hours, according to how business is.

Q. How about Sunday? A. Sometimes on Sundays and sometimes not; when business calls for it.

Q. About how long on Sundays? A. Well, maybe a half hour or sixty minutes.

Q. And do you sometimes change off with your other shochet and get away early, or come early? A. A week from every week.

Q. What time do you get away every other week? A. From seven to nine.

Q. Every other week you work from seven until twelve? A. Yes, except Thursday; Thursday I work from five to five.

Q. All the chickens that come in are killed by you or the other shochets? A. Yes.

Q. Just you two gentlemen? A. Yes. 3878

Q. And sometimes they have an extra man? A. Sometimes a helper.

Q. For how long? A. All day.

Q. That is when they are very busy? A. Yes.

Q. And you and the other shochets do all the killing? A. For all the trade, yes, sir.

Q. Now, you say you have been there every day during May, June and July? A. Yes.

Q. Did you, during that time, kill any chicken for the use of a customer which you could not eat? A. No.

Q. Did you ever kill a chicken that was diseased? A. No. 3879

Q. Does that practice exist with the shochets, to kill diseased chickens? A. No.

The Court: Between these months, May, June and July?

The Witness: Sometimes I kill a diseased chicken, but they have to dump, with my eyes, in the dumping barrel.

Q. You yourself dump it in there? A. I or the working man that gives me the chicken to kill, or one of the bosses, because it is my duty to see that that chicken shall not go out in the trade.

3880 Q. And that barrel is destroyed later? A. The dumping barrel is carobolled.

Mr. Heller: That is all.

Cross examination by Mr. Rice:

Q. What time of the day do you leave on Monday? A. From seven until nine.

Q. And you work from seven in the morning until nine? A. Nine or a quarter after nine.

Q. And that is every other week? A. Every
3881 other week.

Q. How about the other weeks? A. Every week the same thing, week from week.

The Court: You said that you worked one week from seven to nine?

The Witness: Yes.

The Court: And the next week when did you work?

The Witness: From seven until twelve.

Q. On Tuesdays what time do you quit? A. On Tuesdays I quit from five to five.

3882

The Court: No, he said Tuesdays, not Thursdays.

The Witness: Tuesdays it is the same like Monday.

Q. From seven until nine? A. Or half past nine; one week from a week for seven to twelve.

Q. Wednesday? A. The same thing, the same.

Q. And Thursday? A. Thursday from five to five.

Q. Friday? A. From six to twelve on Friday, but a week over a week. One week I go after nine and the other week I have to stay until six to twelve.

Q. Saturday? A. Saturday thirty minutes or an hour or one-half, according to business.

Q. What time of day? A. The day?

Q. Yes. A. The day I leave early——

The Court: On Saturday what time do you go to work?

The Witness: On Saturday?

The Court: Yes.

The Witness: Since sunset, thirty minutes after sunset.

3884

Q. Sundays do you work at all? A. Sunday, sometimes.

Q. What time? A. From seven or eight or seven-thirty.

Q. How many hours do you work a week? A. Well, I couldn't figure how many hours. Can't you figure hours, how many hours?

The Court: It doesn't figure over thirty, I do not think.

Q. You work twenty-five hours one week and then thirty-four hours the next week? A. That 3885
is close to that.

Q. That is right? A. Well, yes.

Q. That is all you work? A. Yes.

Q. And you get forty dollars a week? A. Yes.

Q. You have a good job? A. What is that?

Q. You have a good job? A. I suppose so.

Q. You like your job? A. If I don't like it I wouldn't stay.

Q. You want to keep your job? A. Sure; I like to keep it.

Q. There are a lot of shochets out of work? A. I tell you, I am not a business agent for my men. I don't know how many is empty.

3886 Q. Do you know whether there are any shochets out of work? A. Yes.

Q. A lot of them? A. I don't know.

Q. When did you get your job with the Schechters? A. In February.

Q. February? A. Yes, a year ago.

Q. What were you doing before that?

The Court: February, 1933, he said.

Q. Yes; what were you doing before February, 1933?

3887

Mr. Heller: That is too remote.

The Court: Oh, that is all right.

The Witness: What I was doing before? In the same profession, I am forty-eight years in that profession, my dear man.

Q. Did you have a hard time to get a job in February, 1933? A. No.

Q. No? A. No.

Q. You don't know that there are three hundred shochets out of work today? A. That has

3888 nothing to do with me.

Q. Isn't that true, there are several hundred shochets out of work? A. Several hundred?

Q. Several hundred, yes. A. Several hundred, I don't think so.

Q. There are a lot of shochets out of work? A. Well, I told you one time I am not a business agent; that is a question for the business agent, but not for me.

Q. Did you talk with the other shochet who testified here this morning? A. I talked with him?

Q. Yes. A. I talked with him, but not about this case.

Q. Not about this case? A. No.

Q. He didn't tell you what he testified to this morning? A. I talk, but not about this case.

Q. He didn't tell you that he testified this morning that he wasn't the business representative of the union? A. He was?

Q. Yes. A. I don't know.

Q. He didn't tell you that he was not the business representative? A. Him, no.

Q. Just a moment—— A. Excuse me, I am Rabbi from the Assembly of Hebrew Orthodox 3890
Organization, and anything what they say is holy, and don't ask me about other questions, ask me about the case.

Q. All right. A. And I will answer you right.

Q. I will ask you just about the case. Did you talk about this case this morning? A. With who?

Q. With anybody. A. No.

Q. Nobody? A. No.

Q. Today? A. No.

Q. Yesterday? A. No.

Q. Day before yesterday? A. No; it is not my business. 3891

Q. Did you ever talk to anybody about this case? A. About that case?

Q. About this case? A. No, one——

Q. About testifying here? A. No; I told you one time I am not interested in this case, and I didn't speak with nobody except the day was the counsel in the place and he says I have to come in this case for a witness, that is all.

Q. Did he tell you about the questions that he would ask you? A. No, not me; I only talk about what is holy.

Q. He didn't ask you any questions at all? A. No. I am too honest for that; he don't want to.

3892 *Joseph Weisman—By Defts. Cross*

Q. He didn't ask you the questions that he would ask you on the stand? A. No.

Q. Nobody asked you any questions? A. No, if somebody ask me I won't answer it, only if the Judge he is asking me I answer him.

Q. You didn't know what questions were going to be asked today? A. What they ask me, no. If the Judge will ask me I will answer it——

The Court: Did you know what they were going to ask you here today?

3893 The Witness: No.

Q. You didn't have any idea what they would ask you? A. I don't know.

Q. Everything you answer is holy? A. I am never interested in some other business.

Q. You say everything you answer is holy? A. No, only my profession, that is all.

Q. You work only twenty-five hours one week and thirty-four hours the next week? A. Yes, I suppose so.

Q. You do not know what happens after you
3894 go away? A. I know what time I go and the time I have to come away, and that is the time I have to come and that is the time I have to go.

Q. I say you do not know what happens at the Schechter's place after you go away? A. Do you know what is in Washington doing now?

Q. No. A. If I am not in the place how can I know? Do I know what happens when I am not in the place?

Q. You just know what happens when you were there? A. Sure.

Q. You do not know what happens when you are not there? A. I am not responsible for

nobody. Can you be responsible for what happens in Paris?

The Court: Do not ask him questions.

The Witness: But what is——

The Court: Do not ask him questions, just answer the questions.

The Witness: That is an answer. Oh, eleven or twelve men there, well, I am not so old.

The Court: Never mind, there are other men here, so don't you worry. 3896

The Witness: All right.

Mr. Rice: That is all.

Redirect examination by Mr. Heller:

Q. Just one question, Rabbi. You know these four gentlemen sitting at the table, the Schechters? A. The Schechters, yes.

Q. You know them? A. Fine boys——

Mr. Rice: Just a minute; this is not proper redirect examination.

Mr. Heller: I am making him a character witness now. 3897

The Court: He can do that. He wanted to get through with him as a fact witness, and now he is questioning him as a character witness. He can do that rather than call him again.

Mr. Rice: I withdraw the objection.

Q. You know people that know the Schechters? A. Other people I know, sure.

The Court: Do you know other people that knew these men?

The Witness: Other people's business, yes.

3898 The Court: Are you acquainted with other people that are acquainted with them, do you know friends of theirs?

The Witness: Sure.

The Court: All right; that is what he is asking you.

Q. Have you ever heard anything bad said about them? A. No.

Q. What is their reputation in the community? A. Good boys.

3899 Q. What is their reputation for honesty? A. Good boys.

Q. For truthfulness? A. Truthfulness.

Mr. Heller: All right, that is all.

The Witness: All right.

Mr. Rice: That is all.

The Witness: All right, Judge, thank you.

(Witness excused.)

3900 HARRY LANDES, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. Jacob Heller:

Q. What is your business, Mr. Landes? A. Live poultry slaughter house.

Q. How long have you been in that business? A. Four years.

Q. Where is your place of business? A. 338 Johnson Avenue.

Q. I do not think these gentlemen back here can hear you. Talk louder. A. 338 Johnson Avenue.

Q. Where is that? A. Brooklyn.

Q. Do you run that slaughter house yourself? A. With partners, a corporation.

Q. Were you ever in any part of the poultry business before you went into this slaughter house business? A. Retail.

Q. Where were you in the retail business? A. 381 South Fifth Street, Brooklyn.

Q. How long were you in that business? A. Six years.

Q. Did you have any other connection with the poultry industry other than the two places? A. No. 3902

Q. So would you say you have been in the poultry industry for nine years? A. Nine years, nine or ten years—about nine or ten.

Q. Are you in the same type of business now that the Schechters are? A. That is right.

Q. Where do you buy your poultry? A. Well, Philadelphia, New York.

Q. Do you make purchases very often in Philadelphia? A. Yes.

Q. How often do you make purchases in Philadelphia? A. On the average of four times a week, three times a week. 3903

Q. Are you acquainted with the practice of the commission merchants in Philadelphia? A. Yes.

Q. Will you tell his Honor and the jury just what the practice is when a slaughter house man comes to buy chickens in Philadelphia? A. Well, come in and buy the poultry out there——

Q. Where is that? A. Philadelphia.

Q. Any special place? A. Commission men.

Q. Is it at a car barn or a place of business or where? A. Most of mine case, I don't buy in

the—there is a quite a few commission men, and most of my case only I do with the one man.

Q. Where are most of the commission men in Philadelphia? A. On Front Street.

Q. Is that where you buy? A. No, I don't buy there.

Q. Where do you buy? A. Risser & Rabinowitz.

Q. Did you from time to time buy there from other commission men besides Mr. Rabinowitz? A. Very seldom.

3905 Q. But sometimes? A. Sometimes.

Q. You have observed how they sell their chickens there? A. Yes.

Q. Will you tell us the method in purchasing chickens? A. Well, they are selling their chickens in baskets, what we call them right here in New York; come in and buy there about 50 baskets, that means crates, and we start to weigh the chickens as the baskets they are in, then we get 50 other baskets, empty, they are not full with chickens, with poultry, and we weigh off on the scale 600 pounds or 800 pounds, and we take

3906 hold of the chickens, we take every chicken in our hands, and anybody—the buyers—that might be there, who buys them, takes every chicken in his hand, feels if she is good. If she is good, he puts her in the empty crate; if she is no good, he puts it in another crate.

Q. Would you say then that the practice there is to select the chickens you want? A. That is right.

Q. Do you know whether that practice is different than the practice here in the West Washington Market? A. Well, out here we, well, they put them in, in coops.

Q. And you buy the coops as they come? A. Well, no, we could put in our hands and see if there is any culls and take them out.

Q. But you must buy the coop as a whole? A. We do not buy from the coop. They take them out of the cars and put them in the coops and we have the right to go and feel; if we feel any culls we take them out.

Q. But otherwise you must take the coop as it comes? A. That is right.

Q. Does that differ then from Philadelphia, 3908
in that in Philadelphia you can take anything you want? A. Well, there is a great difference. As far as we coming to Philadelphia, when we feel every bird; feeling if that bird is good, we take him; if it is no good, we put it back. Over here when we take a coop we put in 60 chickens and perhaps the coop has got small things and we can in some parts not put in our hands, and with the 59 or 60 chickens in the coops, it is very inconvenient, so probably we cannot find a bad chicken in it as in that place, where we put in our hands in the other place. By the time I get 3909
through feeling that coop, another coop comes on top. Whereas, in Philadelphia, I could buy with feeling every bird.

Q. And you can select in Philadelphia those that you want? A. That is right.

Q. And leave over those that you don't want? A. That is right.

Q. And as a result of that practice do you bring into New York, when you purchase in Philadelphia or when any other market man does it, better birds? A. Well, as far as my own experience that I find out there, I do get a better bird out there.

Mr. Jacob Heller: Your witness.

3910 *Harry Landes—By Defts.—Cross*

Cross examination by Mr. Rice:

Q. You told us about the practice on the part of the Philadelphia commission merchants, is that right? A. Yes.

Q. You say that in Philadelphia the wholesale slaughter house operator from New York who goes to purchase poultry in Philadelphia can reject the poultry that he does not want? A. That is right.

Q. What do they do with the rejected poultry?

3911 Mr. Jacob Heller: If your Honor please, with respect to that, I suppose he is making him his own witness.

The Court: I don't know. What is the question?

(Last question repeated by the reporter.)

The Court: I will let him answer.

Q. What do they do with the rejected poultry? A. Well, I cannot say what they do, or specifically a thing I do not know, but I imagine——

3912 The Court: Not what you imagine. What do they do?

The Witness: I don't know.

The Court: If you did not take the chicken what do they do with that chicken?

The Witness: They dressed him.

The Court: What?

The Witness: They dressed him.

Q. You don't take a chicken, when you don't take a chicken they put it in another coop? A. That is right.

Q. Later on they sell it, is that right? A. I do not see them sell it. I say, they dress it.

3913

Q. Somebody else buys the rejected chicken? A. (No answer.)

Q. Do you know whether or not anybody else buys the rejected chickens? A. I don't know.

Q. You do not know that they are destroyed and disinfected, do you? When I say they are rejected, I do not mean that the chicken is not it is not to be used for human consumption. I say that the chicken is a thin-breasted chicken and which we cannot sell in New York, because if we go out to Philadelphia to get merchandise we want to get a good grade of poultry that we should not have to sell it for less cost that we buy them for.

3914

Q. You have never seen them destroy any of these rejected chickens? A. If there is a sick chicken——

Q. What? A. If they are a sick chicken, they destroy it.

Q. Have you seen them disinfect any of the chickens? A. Yes.

Q. Have you seen them destroy all of the rejected chickens? A. No.

3915

Q. They put most of them in another coop, is that right? A. That is right.

Q. How long did you say you had been a slaughter house operator? A. About four years.

Q. Think carefully. Is that your answer, four years? A. Yes.

Q. Is that all? A. That is all.

Q. You were never a slaughter house operator before four years ago? A. Slaughter house man?

Q. Yes. A. I was in 1922.

Q. Yes, you have been in the poultry business for some years, haven't you? A. Yes—no, only for four years.

Q. For 12 years? A. No.

3916

Q. Since 1922? A. I was there a year and I went out.

Q. Well, why didn't you tell us about that? A. You did not ask me.

Q. How did you happen to get out of the business in 1922?

Mr. Jacob Heller: I respectfully object; I don't think it is material here.

The Court: Yes, I think that is a long ways back. It does not seem to me to be applicable here. It is pretty remote, Mr. Rice.

3917

Q. Did you go into bankruptcy in 1922?

Mr. Jacob Heller: I object to that as immaterial.

The Court: It seems to me, Mr. Rice, that it is pretty remote, as to what happened in 1922.

Mr. Rice: I am merely interested in the credibility of this witness and not the substative facts, your Honor.

3918

The Court: I do not see that 1922 is of much moment.

(To witness): Did you stay out of the businesss when you got out?

The Witness: I went in the retail business.

The Court: You went in the retail business, did you?

The Witness: Yes.

The Court: And when did you go back in the slaughter house business?

The Witness: About four years.

3919

Q. Have you been in the slaughter house business all of the time during the past four years? A. Yes, we discontinued doing business for six weeks.

Q. When did you discontinue business? A. About April.

Q. Of 1934, is that right? A. That's right.

Q. Now the Code went into effect in April, on April 23rd, 1934, is that right? A. That's right.

Q. And you went back in the business after the Code went into effect?

3920

Mr. Jacob Heller: I object on the ground that he is making this witness his own witness.

The Court: Overruled.

Mr. Jacob Heller: Exception.

Q. Now you again went back in the business after the Code went into effect? A. That's right.

Q. Why did you go back into the business?

Mr. Jacob Heller: I object, if your Honor please.

The Court: Overruled.

3921

Mr. Jacob Heller: Exception.

A. I figure my idea is probably with the Code I will be able to make a living.

Q. And you went back in the business because of the Code? A. That's right.

Q. And you thought you would be able to make a living with the Code? A. That's right.

Q. And you went into the business some weeks after the Code went into effect? A. I cannot state exactly, but one or two or about three weeks.

3922 Q. Now after you saw the Code operating for a couple of weeks, you went back into the business? A. Yes.

Q. And you thought that you could make some profit with the Code in effect? A. Yes.

Q. Now you say that at West Washington Market, when you purchased poultry, you can throw out the unfit chickens, the chickens unfit for human consumption?

Mr. Jacob Heller: That was not the
3923 testimony, your Honor.

The Court: He testified about Philadelphia; I do not know that he was asked about New York.

Mr. Rice: He was asked to compare the West Washington Market with Philadelphia, your Honor.

The Court: That is right, go ahead.

Q. You stated, did you not, that in West Washington Market the buyer sometimes throws out some unfit chickens, chickens unfit for human consumption? A. That is right.

3924 Q. And they are chickens unfit for human consumption, even after the inspection? A. I will not say that there is any chicken that is not fit for human consumption not destroyed by the inspectors. We do find a chicken where she is probably a thin-breasted chicken and that is what we call them.

Q. And you throw out some of those thin-breasted chickens? A. Yes.

Q. Even after the inspection? A. Yes.

Q. You throw out some chickens that are unfit for human consumption even after the inspection? A. If we can find them.

Q. If you can find them? A. Yes.

Mr. Rice: That is all.

3925

Redirect examination by Mr. Jacob Heller:

Q. Those chickens rejected by you in Philadelphia, are those chickens fit for human consumption? A. They are fit for human consumption.

Q. Is there any question about that in your mind? A. No, no question so far as my knowledge in the business is concerned.

Mr. Jacob Heller: That is all.
(Witness excused.)

3926

LEO SCHIMMEL, called as a witness on behalf of the defendants, having been previously duly sworn, testified as follows:

Direct examination by Mr. Heller:

Q. Now you are the regular bookkeeper of the Schechter Brothers? A. That's right.

Q. At No. 858 East 52nd Street? A. That is right.

3927

Q. How long have you been there? A. A year and a half.

Q. Is this your first job? A. In the poultry business this is my first job.

Q. And you did all the bookkeeping while you were there? A. That is right.

Q. Now have you the books here in court? A. Yes, sir.

Q. And will you take the book and show the profit and losses, week by week, the purchase and sales book? A. Yes, sir.

Q. Turn to the week ending May 16th. A. Yes, sir.

Q. And what was the profit or loss for the week ending May 16th? A. You mean May 18th?

3928 Q. That is right.

Mr. Rice: If your Honor please, I object to this as being quite immaterial, it is quite immaterial whether the Schechters made a profit or not.

Mr. Heller: Your Honor has heard the statement that we are the largest concern in Brooklyn, and that we are selling diseased chickens, and the effect is that we have been enriched thereby.

3929 The Court: No, your people said that. Your experts, the witnesses that you called said they were the biggest people in the business here in Brooklyn—some of the biggest slaughter house people. Their witnesses did not say that.

Mr. Heller: May I show our condition in so far as it affects——

The Court: No, you cannot present an issue yourself. It was your witnesses that said that, and not the Government's.

3930 Anything that has to do with the business, if you want to show their volume of purchases and the volume of sales, yes, that may have some relation to the fact about the reports, but whether you made or lost money is not one of moment here. There is no charge on that. They did not show that you were such large people, that was your own experts that told you how large these people were.

Mr. Heller: I also heard that from the Government's witnesses.

The Court: I did not, so you have the advantage of me.

3931

However, Mr. Heller, if you want to show the volume of sales, all right, but whether they made a profit or a loss, we are not dealing with anything of that kind.

We are not dealing with any prices, there is no price fixing here in this Code.

There was a witness produced by the Government that said that the report should have been larger and you can meet that, but he was not dealing with the question of profits, he was dealing with the volume.

3932

Mr. Heller: If your Honor pleases, our books went into the record——

The Court: Yes, yes, I know, and you let them go in.

Mr. Heller: May I offer the original books in evidence now, your Honor?

The Court: Yes, you may do so if you want to.

Mr. Heller: All right.

3933

Q. Is this book kept in the regular course of business? A. It is.

Q. By whom——

Mr. Rice: Just a moment.

The Court: You have got the transcript.

Mr. Rice: Not from this book.

Mr. Heller: From all the books.

Mr. Rice: We offered certain entries from the books that we regarded as material to the case, and Mr. Heller consented that they go in. Now as I understand it this book is not the book on volume, it is simply the book showing profit and loss.

3934 *Leo Schimmel—By Defts.—Direct*

Mr. Heller: No, this is not a book that shows only profit and loss.

Q. What does it show? A. It shows the volume of sales, it shows the expenses.

Mr. Rice: Then let us just have the volume of sales put in.

Mr. Heller: No, I want the whole book to go in.

The Court: If you were allowed to put
3935 a copy in, if you were allowed to put in what was said to be a copy of the book they can put in the book from which that was taken. If there is any question about this book, all right, but whatever book be used, if you can put in a copy surely the original can be put in.

Q. The Government man that was at your place, did you give him this book to make copies from? A. I gave him all the books.

Q. And he made a copy from this book? A. Yes.

3936 Q. This is one of the books that you keep in the regular course of business? A. Yes, sir.

Q. And the entries are made at or near the time that the transaction takes place? A. The week ending the sales, the transactions are made.

Q. They are entered in the book? A. In the book.

Mr. Heller: I offer that book in evidence.

Q. What do you call this book? A. Sheet book.

3937

The Court: What kind of a book?

The Witness: Sheet.

The Court: Sheet?

The Witness: S-h-e-e-t.

Mr. Rice: Do you mind if I look at it?

The Court: You can have it, it has been offered in evidence.

Mr. Heller: You can have it as long as you want it.

The Court: Look at it, but do not let us get this mixed up. He says that is the book from which the accountant took your copy. Let the accountant look at it, and he can tell you whether he used it or not.

3938

Mr. Rice: All right.

The Court: No objection?

Mr. Rice: No objection.

(Marked Defendants' Exhibit G in evidence.)

Q. I show you Government's Exhibit 30 and ask you whether you recognize that document? A. Yes, sir.

3939

Q. Who made that up? A. I made it up.

Q. Did you receive any instructions from anyone with reference to this? A. I received instructions from Benny Forsmith.

Q. Did he tell you how to make it out? A. He told me to take the average price for the day and the sales and the amount of weights.

Q. Do you know what an accommodation sale is? A. Yes, sir.

Q. What is it? A. An accommodation sale is not exactly a sale, but it is sending merchandise to somebody for accommodation, no profit is involved in that transaction.

Q. Did you include such sales in that Government Exhibit 30? A. Yes, sir.

Q. You excluded them or included them? A. Included.

Q. All the sales, accommodation sales? A. I didn't include them in that exhibit, but I included them in my books.

Q. Now, will you tell me by examining your books each particular accommodation sale you left out, to whom it was made and the amount of poultry involved?

3941

Mr. Rice: Just a moment, the books are now in evidence, and so are the reports.

The Court: That is true, but it would take the jury a long time to look them over. If he can point out the pages it would be much easier for everybody.

Q. Did you compile that for me this morning at the Schechter Brothers' place? A. Yes, sir.

Q. Have you got that paper that you compiled for me?

3942

Mr. Rice: If your Honor please, may I urge a further objection; it is quite immaterial whether they designate them accommodation sales or not; accommodation sales are sales.

The Court: I do not know whether they are or not, that is a question of fact whether they are or not.

Mr. Heller: Not only that, I will connect it up and show the same sales are reported elsewhere.

The Court: If somebody is buying simply for somebody else, as an accommo-

dation and there is no question of profit involved it may or may not be a sale, that is a question for the jury. What they are trying to show is it was not a sale, it was simply an act of accommodation, and that is a question for the jury.

Q. Will you give us the amounts and the dates? A. On the 17th of May, Mogen David took 900 pounds and 1071 pounds. On the same date 1039 pounds, 339, 166 pounds——

Q. Mention the name on each occasion. 3944
A. On May 21, Joe Schechter 167 pounds; on the same date Mogen David 1118 pounds, 168 pounds and 174 pounds. On the 22nd Mogen David 165 pounds; on the 23rd Mogen David 135 pounds; on the same date Joe Schechter 999 pounds, Mogen David 930 pounds; on the 24th Mogen David 1972 pounds, Joe Schechter 511 pounds. On May 25th Mogen David 956 pounds and 477 pounds, Joe Schechter 160 pounds; on May 31, Joe Schechter 128 pounds; on the same date Mogen David 1449 pounds and 3545 and 343 pounds, Joe Schechter 1866 pounds. On June 3945
2nd Mogen David 600 pounds, Mogen David 12½ pounds. On June 4th Joe Schechter 31½ pounds, 259 pounds and 380 pounds. Mogen David 200 pounds and 127 pounds. On June 5th Joe Schechter 382 pounds and 202 pounds. On June 6th Mogen David 1088 and 1968, 360. On June 7th Mogen David 992 pounds. On June 8th Mogen David 334 pounds and 166 pounds and 948 pounds; Joe Schechter 1368 and 926. On June 11th Mogen David 987 and 167 pounds. On June 12th Mogen David 1029 pounds. On June 14th Mogen David 553 pounds and 1638 pounds, 183 pounds and 513 pounds and 318.

3946 On June 14th Mogen David 39 pounds, Joe Schechter 378 pounds and 1002 pounds. D. Hirschon on June 14th 595 pounds, Mogen David 581 pounds and 169 pounds. On June 15th Joe Schechter 158 pounds, Mogen David 1075 pounds, 163 pounds and 179 pounds. On June 13th Mogen David 12½ pounds. On June 19th Mogen David 79 pounds. On June 19th Joe Schechter 890 pounds. On June 20th Mogen David 890 pounds and 567 pounds. On June 21 Mogen David 162 pounds. On June 22nd now,

3947 287 pounds and 15 pounds. June 22nd, Joe Schechter, 393 pounds; Mogen David 583 pounds, 322 and 149 pounds. On June 27th Mogen David 1820 pounds, 732 pounds and 332 pounds. On June 28th, Joe Schechter 52½ pounds; Mogen David 984 pounds. June 29th Mogen David 18 pounds. On June 29th, 160 pounds, Mogen David.

Q. Do not go beyond June 29th. A. Mogen David, 165 pounds and 154 pounds.

Q. Did you total the amount up? A. I am up to July——

3948 Q. Have you got the total now of the amount? A. 52,420 pounds.

Q. Those were accommodation sales? A. Yes, accommodation sales.

Q. When you talk of Joe Schechter, you mean the Joe Schechter sitting right here? A. Yes.

Q. That stuff went to 991 Rockaway Avenue? A. That is right.

Q. He had a place of business up to that time? A. Yes.

Q. Up to the end of June? A. Yes.

Q. When did he come into the 52nd Street place? A. July 3rd or July 6th, I don't remember the exact time.

3949

Q. Up to that time? A. He was in 991 Rockaway Avenue.

Q. Who was Mogen David? A. Mogen David is the father of the Schechter brothers.

Q. He is the father of the Schechter brothers? A. Yes.

Q. David Schechter? A. At 539 Snedecker Avenue.

Mr. Heller: I offer this book in evidence.

(Marked Defendants' Exhibit H in evi- 3950
dence.)

Mr. Rice: If your Honor please, Government's Exhibit 30, which is this series of seven reports, goes only to the week ending June 11, 1934, and the witness has been reading up to June 29, 1934.

Mr. Heller: Week ending June 11th? That would be June 18th.

Mr. Rice: No, week ending June 11th.

Mr. Heller: That means the 18th.

Mr. Rice: No, week ending on June 3951
11th.

The Court: That means June 11th is the end of the week.

Mr. Rice: June 4th to June 11th.

Mr. Heller: Then we will have to take off the——

The Witness: Last week.

Mr. Heller: We will have to compute this again.

The Witness: Have to take the last week.

3952

Mr. Rice: We will save time if the witness would just designate the report at which June 11th ended.

Mr. Heller: We will have to add some more then because this starts from April 30th, and we only figured from May 16th, so we get credit for another month. I had the wrong one.

Q. Now you will have to go back to April 30th——

3953

Mr. Rice: Can't this computation be done by the attorneys, your Honor?

Mr. Heller: I am not a bookkeeper. I do not know what is in the books.

Mr. Rice: Oh, yes, your bookkeeper could do it for you outside of court, and we could have our bookkeeper check up on that. It seems to me this is merely a matter of comparing two exhibits.

Mr. Heller: I would not say that.

Mr. Rice: And it is not very enlightening to the jury to just hear a string of

3954

figures read off. It does not help anybody. I have no objection, but I think we might save time.

Mr. Heller (addressing the witness): Suppose you sit over here and compute the figures from April 30th to the week ending June 11th, of accommodation sales.

The Court: Why doesn't he and the other gentleman both sit down and let them write it out, and then you can offer it. That would be all right, wouldn't it?

Mr. Rice: Yes.

Mr. Heller: To save time I will call the other bookkeeper from 991 Rockaway Avenue.

3955

The Court: All right. You want him to start with April 30th and go to June 11th?

Mr. Heller: That is right, yes, sir.

The Court: If you will point it out to the other gentleman as you go along you will save time.

(Witness excused.)

IRVING MEUTERICK, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

3956

Direct examination by Mr. Heller:

Q. I show you these Government's Exhibits, Exhibit No. 29—first let me ask you, what is your occupation? A. Bookkeeper.

Q. You are the bookkeeper for the Schechter Live Poultry Market at 991 Rockaway Avenue? A. Yes.

Q. For how long? A. Three years.

3957

Q. Now, do you do bookkeeping for other markets? A. Yes.

Q. I show you Government's Exhibit 29, and ask you if you have ever seen this before? A. Yes, sir, I did.

Q. And did you make this out? A. Yes, sir.

Q. Do you know what an accommodation purchase is? A. Yes.

Q. Did you have such accommodation purchases for Joseph Schechter or the Live Poultry Company? A. Yes.

Q. And some of those were for the Schechter brothers at 52nd Street? A. You mean the A. L. A.?

Q. Yes. A. Yes.

Q. Did you incorporate in this report all of the merchandise you received from the 52nd Street address? A. I don't understand that.

Q. All these accommodation purchases, were they incorporated by the Schechter Live Poultry Company? A. What do you mean by the word "incorporated"?

Q. You made this out? A. Oh, yes.

Q. From what? A. From the sales book of the Schechter Live Poultry Market at 991 Rock-
3959 away Avenue.

Q. And included in the books of the Schechter Live Poultry Market is every item of merchandise bought by the way of accommodation from the 52nd Street place? A. Yes.

Q. Are all those purchases reflected in this exhibit? A. That is right.

The Court: I do not want to bother you, but where do you get that April 30th from, Mr. Heller?

Mr. Heller: The report is dated April
3960 30th that the Government offered in evidence. It is unfortunate, but they offered the exhibit, so it is in.

Q. Did Joseph Schechter have his business under the corporation at 991 Rockaway Avenue? A. Under the name of the Schechter Live Poultry Market.

Q. For how long? A. For about a year or two or three.

Q. Up until what time? A. July 5th.

Q. You closed the books as of July 5th? A. Yes.

Q. And the place has been closed ever since? A. Closed completely.

3961

Q. Closed and padlocked, is that right? A. Yes.

Q. Now, up to that time was Josejh Schechter conducting the business at 991 Rockaway Avenue? A. Well, I think about four or five weeks, or maybe two months before he closed up, he met with an accident and he was not able to conduct the business, he was laid up in a hospital in Brooklyn somewhere.

Q. He did not do any business at all? A. Well, I was there to take charge, but he himself was laid up in a hospital.

3962

Q. Do you know whether or not Joseph Schechter guaranteed the account of the 52nd Street address? A. I think so, yes.

Q. Do you know? A. Yes, he did.

The Court: You say you know?

The Witness: Yes.

Q. He did? A. He did.

Q. And was that his extent of interest in the business up to July 3rd? A. The extent of interest where, the A. L. A.?

Q. That is right. A. Yes.

3963

Q. Just a guarantee of the account? A. Yes.

Q. These accommodation purchases made for Joe Schechter or the corporation, were they for the cost of the merchandise?

Mr. Rice: I object. Let us have the figures.

The Court: Yes, if he knows.

Mr. Heller: I am trying to save time, that is all.

Q. Have you any of the books of your corporation with you? A. All I have is the sales book;

I haven't the purchase book with me, but in some parts of the sales book it may be shown that the accommodation sales were made at that market price, whatever the market price was that day.

Q. Do you think you could ascertain every item from the sale book? A. Yes, I think so.

Q. Will you get the sales book? A. Here it is.

Q. Now, have you got the weekly sheet books here with you? A. No, I did not take that along.

3965 Mr. Heller: If your Honor pleases, suppose we suspend with him until Monday morning, and let him bring those weekly sheet books. It would be much easier to ascertain from them.

Q. Unless you can tell definitely from these sales books. A. I think it would be better to bring the purchase book here and then that would show the prices. You see, even if I would say it was a market price, according to the sales book, then I would have to show according to the purchase book that it was the cost price, because
3966 an accommodation sale is supposed to be a sale without a profit.

I have here, on May 29th, an item of 270 pounds at 15¾ cents, but then I would have to show it was purchased from the West Washington Market at that price.

Q. That is right.

Mr. Heller: Now, if your Honor pleases, while they are computing some figures, may we take a short recess?

The Court: Yes, we will take a recess for ten minutes. Gentlemen of the jury do not discuss this case, and the bailiff will call you.

After Recess

3067

ISIDORE MOLMOD, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. Joseph Heller:

Q. What is your business? A. Meat and poultry.

Q. Beg pardon? A. Meat and poultry.

Q. Were you during the month of June——

The Court: There is no objection to these gentlemen remaining here now?

3068

Mr. Heller: No, unless Mr. Rice objects.

Mr. Rice: No.

Mr. Heller: This does not pertain to the books.

Q. How long have you been in the business? A. About twenty years.

Q. Were you, during the month of June, 1934, president of the Retail Butchers' Association? A. Yes, sir.

Q. Is that correct? A. That is right.

3069

Q. Do you buy your poultry from the Schechters? A. Well, during the month of June I bought on the 22nd, 28th and 29th.

Q. Have you been buying since then? A. Yes, sir.

Q. Did you find any diseased chickens in their premises on the 22nd, 28th and 29th? A. Never.

Q. Have you at your meetings of the Retail Butchers' Association discussed the Schechters, like many wholesale dealers? A. On many occasions.

Q. What is their reputation for selling diseased chickens? A. Never a word said about the Schechter brothers selling that sort of chickens.

3970 Mr. Rice: I move to strike that out; that is not a matter of reputation.

The Court: What was their reputation in the community? Is it good or bad?

Mr. Heller: Yes, that is one of the things that we are being charged with, and naturally that would be one of the things to inquire about.

Mr. Rice: I move to strike that out and ask your Honor to instruct the jury to disregard it.

3971 The Court: That isn't a matter of reputation, their reputation for fair dealings, reputation for honesty, and all that, but you can't ask him generally.

Mr. Heller: But as I understand character testimony, it is divided into two parts. A man that is being charged with robbery, you would ask about honesty; if he is being charged with selling diseased chickens, we have to ask whether he sells diseased chickens.

3972 Mr. Rice: You cannot ask a man in a bank robbery case whether he has a reputation for robbing banks.

Mr. Heller: Why not?

The Court: You can ask whether the man has a reputation of being a fair dealer, and that sort of thing.

Q. Have they got a reputation of dealing fairly with their customers? A. Absolutely.

Q. Do you know from your own knowledge whether or not they sell good, wholesome poultry? A. Yes, sir.

Q. You have been in their place many times? A. Practically three or four times a day.

3973

Q. You do not always buy there? A. Always been buying there.

Q. Do you buy from any other merchants? A. Yes.

Q. A good many in Brooklyn? A. Yes.

Mr. Heller: That is all.

Mr. Rice: No questions.

(Witness excused.)

3974

LEO SCHIMMEL resumes the stand:

Direct examination (continued) by Mr. Heller:

Q. Have you now added up the amount of accommodation sales, poundage? A. Yes, from April 30th through June 11th.

Q. What is it? A. 41,548½ pounds.

Q. You are in charge of the books, aren't you? A. Yes.

Q. You know what the sale price is? A. Yes, sir.

3975

Q. Do you know from your own knowledge whether or not each and every one of those charges by way of accommodation——

Mr. Rice: I object to this leading.

The Court: Yes.

Q. Do you know the price of the poultry that went to Joseph Schechter or his corporation, was it the same as the price——

Mr. Rice: If your Honor please, I object to putting the words into the witness's month. This might be a difficult thing to establish. It might be very doubtful.

Mr. Heller: We have the books here.

The Court: But the books will speak for themselves. I was simply letting him pick out certain items because it would be a very, very hard job. It would be like looking for a needle in a haystack to go through the books. He has picked out certain items, to which their attention will have to be directed, that is all. If you want to make your proof, make your proof as to each item. The way to do would be to prove what it cost and what it sold for, not to ask him the general question.

3977

Q. How long will it take you to compute the price the merchandise was purchased for and the price at which it was sold, by way of accommodation to Joseph and David Schechter, how long will it take you to do that? A. It will take me about half an hour.

Mr. Heller: Suppose we get these figures up by Monday?

3978

The Court: If he can find—let him pick out the—the easiest way to do it—let him point out where in the books the purchase price is found, where in the books the selling price is shown, and then all you have to do is to look at the books. You don't have to have any bother.

Q. Can you do that now?

The Court: He says it will take him a little time. Let him show it Monday. The jury can compare the purchase price with the sale price.

Mr. Heller: We can do that, yes, and may we suspend for the afternoon?

3079

There are still a few questions I can ask him.

The Court: Of course, then it is a question of fact whether that is a sale or what it is.

Q. I show you this paper and ask you what this is. A. 805 Wagabul, 1939 Nostrand Avenue, on June 20th, 1934, 131

Mr. Rice: I object to reading it.

The Court: What is it?

3080

The Witness: Yes, sir.

Q. What is this paper? A. It is the charge.

Q. Does that paper indicate the price of the chickens sold to various customers? A. Yes, sir.

Q. Quantity and quality? A. Yes, quantity and price.

Mr. Heller: I propose to prove, with reference to the counts wherein it is claimed that we sold diseased chickens, and I want to show to whom we sold the chickens on that day, the particular person mentioned and the price charged for these chickens.

3081

The Court: Well, I don't know what that proves. Of course if they are charged with selling somebody you can prove the sale on that day, which cooperates the allegation of the sale.

Mr. Heller: I wish to prove that.

Mr. Rice: What, you wish to prove our allegation that there was a sale?

Mr. Heller: That there was a sale and the price charged and let the jury draw their own inference as to whether or not they were diseased chickens.

3982 *Leo Schimmel—By Defts.—Direct*

The Court: He can show what the transaction was according to the books.

Q. Well, that book is kept in the regular course of business? A. Yes.

Q. And that is a day charge book? A. Yes.

Q. And they have numbers on the bottom? A. Yes, sir, the charge numbers.

Q. And those numbers correspond with the numbers in the sales book? A. Yes.

3983 The Court: They correspond with the numbers in the sales book you say?

The Witness: Yes, your Honor.

Mr. Rice: I now offer this charge book, and this book as one exhibit.

The Court: Now, Mr. Rice, if that is the book of sales, if that is the way they kept the sales they can offer it.

Mr. Rice: Yes, your Honor, I have no objection.

(Marked Defendants' Exhibit I in evidence.)

3984 Mr. Heller: I will show them to the jury later, your Honor, when we sum up.

The Court: Yes, that is a matter of argument and either one of you can point out anything in that exhibit.

Q. Now, forgetting about books until you have a chance to compare the figures. When did you say you commenced your employment with the Schechters? A. At seven in the mornings.

Q. No, no, what year did you commence? A. February of 1933.

Q. And at what salary did you start?

The Court: We had that before, didn't we?

3985

Mr. Heller: But he is now my witness, your Honor, on the wage question.

Q. When were you raised? A. I don't remember the exact date, but I believe it was in April, the early part of April.

Q. And you were receiving how much from April on? A. $20 a week.

Q. And as part of your compensation you were receiving chickens? A. Yes, sir.

Q. Every week? A. Yes.

Q. Now about how many did you take a week? 3986

Mr. Rice: I object to that, the charge here is of payment of wages less than 50 cents an hour and the Code provides that nothing except the legal tender may be paid as that 50 cents an hour.

The Court: Where is that, let me see it. He said three chickens a week and that they were worth $3 or $4. That is what he testified to before.

Mr. Rice: On page 9 of the indictment, your Honor.

3987

The Court: I know, where in the Code?

Mr. Rice: Article 4 under Wages, subsection 9: "Employers shall make payment of all wages in lawful currency or by negotiable checks payable on demand, and payment of wages shall be made at least once every two weeks."

Mr. Heller: The Code says "shall make" and if someone wants to buy chickens do we have to have a bookkeeping entry, a charge and a re-charge?

Mr. Rice: You are not establishing that he bought chickens?

3988

Mr. Heller: I am establishing that they were not gifts.

The Court: That's right, it says here "shall be made in lawful currency or by negotiable check." I suppose they wanted to escape the old practice of having them deal at the store maintained by the employer. I assume that is it.

At any rate, that is what it says, it says that they have got to be paid in lawful tender or negotiable check, and chickens are neither.

3989

Mr. Heller: It is my understanding that lawful tender is in gold and inasmuch as we are off the gold standard——

The Court: Chickens are not lawful tender.

Q. Did you receive as part of your compensation——

The Court: You have already got that in.

3990

Mr. Heller: Yes, but the charge here is different, the charge is he hasn't received more than 50 cents——.

The Court: I understand, but you have already got it in. If you want to keep on all right, but you have already got in evidence that he received chickens worth three or four dollars a week. If you want to keep on go ahead, you might not get it in this time, you got it in before. Go ahead, I do not want to stop you, but he testified when he was on the stand before that he got $20 a week and he got three chickens worth three or four dollars. That

3991

is what he testified to there and that wasn't objected to then. Go ahead if you want some more.

Q. Were those chickens valued at any more at any time?

Mr. Rice: I object to that.

The Court: Objection sustained.

Mr. Heller: Exception.

Q. Can you state definitely whether or not you were required to work more than 42 hours a week?

3992

Mr. Rice: I object to that as a leading question.

The Court: Objection sustained. You have got to take it by a certain specific time, you cannot take the whole thing at once. We went over it before with him and he gave it to us day by day.

Mr. Heller: Can't I call him as my witness now?

The Court: You can, but you cannot ask him whether he worked for a long period of time. You can bring it out day by day and week by week, yes. He is your witness and if you want to do that, you may, you are not precluded by what they asked him.

3993

Q. During week ending May 18th, 1934, did you work more than 42 hours per week? A. No, sir.

The Court: You want to wait, young man, you want to be careful and do a little

3994 figuring. You know you have testified before. Now when you answer do a little figuring, determine for yourself.

Mr. Heller: I will go into it in more detail in a few minutes.

The Court: You had better go into it in detail, because otherwise you might get him in a position where he might be confused.

3995 Q. During the week ending May 25, 1934, did you work more than 42 hours a week? A. I do not remember now.

Mr. Rice: May I have that question read?

(Question repeated by the stenographer.)

Q. Is that your answer? A. That is my answer.

Q. During the week ending June 1, 1934, did you work more than 42 hours per week? A. I do not remember.

3996 Q. During the week ended June 8th, 1934, did you work more than 42 hours per week? A. I do not remember.

Q. During the week ended June 15th, 1934, did you work more than 42 hours per week? A. June 15th?

Q. Yes. A. That is the first week that I was away for the week-end, it might be that I worked less that week.

Q. During the week ended June 22, 1934, did you work more than 48 hours a week? A. I do not remember.

Q. During the week ended June 29, 1934, did you work more than 42 hours per week?

3997

Mr. Rice: What was the answer to the last question?

Mr. Heller: He does not remember.

A. June 29th?

Q. Yes. A. Not more.

Q. During the week ended July 13th, did you work more than 42 hours a week? A. I have got to have the figures where I testified before, because I couldn't remember offhand.

Q. During the week ended July 20th, 1934, did you work more than 42 hours per week? A. I 3998
don't remember.

Q. What kind of work do you do in this place? A. Bookkeeping only.

Q. When does the slaughtering cease? A. The slaughtering starts at seven o'clock in the morning, and ceases about 8:30 to 9 o'clock.

Q. And customers have slaughtered all their poultry? A. Yes, sir.

Q. And what else has to be done in the place? A. There is nothing else for me to do in the place, all I have to do is go out and collect.

Q. Do you make the charges? A. Yes, sir. 3999

Q. In the office when the customers buy their stuff? A. No. I do it later.

Q. These charge slips, Exhibit I, do you make these out? A. No, sir.

Q. Yourself? A. I only enter them.

Q. You don't do this work? A. I don't do that.

Q. And that is done by one of the Schechters? A. That is right.

Q. Your work commences with the entry of the charge slips, as evidenced by Defendants' Exhibit I? A. That is right.

4000 Q. You put these in a book? A. Into the sales book.

Q. And is any other business being done during the day after the killing and after these charges are made? A. No, sir.

Q. Your function is merely to enter these into the book? A. Yes, sir.

Q. And to go out and collect? A. That is right.

Q. You do not do anything else besides that?
4001 A. No, sir.

Mr. Rice: I object.

The Court: He is your witness. You are cross examining him.

Mr. Heller: I am showing what work he is doing in the place. The man says he does not remember how many hours he worked in the place.

Mr. Rice: All I hear is Mr. Heller's testimony.

Q. Tell the jury exactly what you do from the
4002 minute you come in until the hour you go home. A. Beginning—when the killing starts I help out by the scale, which generally takes about an hour and a half. From then on I enter the charges, which takes me half an hour or an hour at the most. Then, that is about 9:30 in the morning, at 9:30 in the morning I go out for the rest of the day and I come back at night.

Q. What do you do during the rest of the day, how many customers do you visit? A. I don't visit customers. I only go out to collect from the customers who owe money.

Q. How many customers have they got on the books? A. About 50 accounts.

4003

Q. Do all the customers owe money every day in the week? A. Most of the customers bring in the money. Those that do not bring in, I go and collect from.

Q. On the average how many customers do you see during the week? A. On the average during the week I see about 25 customers.

Q. During the whole week? A. During the whole week.

Q. Isn't that all the work you do for the firm? A. That is the major part of the work.

4004

Q. What else do you do? A. Go out soliciting once in a while—very seldom.

Q. A few times a week? A. A few times a week.

Q. When you received your job—— A. Yes, sir.

Q. (Continuing.) —was anything said about how many hours you were to work? A. No, sir.

Q. Were you asked to work more than 40 hours a day? A. I was never asked to work more than 40 hours.

4005

The Court: A day?

Mr. Heller: A week, I mean.

Q. Did anybody say to you you have to work 48 hours a week? A. No, sir.

Mr. Rice: I object. It is immaterial what they said to him. The issue before this Court is whether or not he did work——

Mr. Heller: That is what I am trying to find out.

Mr. Rice: (Continuing.) —more than 48 hours.

4006 The Court: The thing is whether he did it or not.

Mr. Rice: I move to strike out the answer to the last two questions.

The Court: I do not know what the one ahead of it is. The last one I will strike out.

Mr. Rice: All right.

The Court: I do not know what the other one was.

4007 Mr. Heller: 48 hours a day you struck out, is that it, your Honor?

Mr. Rice: What he was told to do by his employers.

Q. Can you state definitely whether you worked 30 hours a week for any week or 35 or 40, can you? A. Perhaps I did.

Q. What is that? A. Perhaps I worked 30 hours, perhaps 32, perhaps 35. I do not know definitely.

Cross examination by Mr. Rice:

4008 Q. How many hours did you say you worked the week ending June 29, 1934? A. That particular week I said I worked more than forty-two.

Q. More than forty-two? A. Yes.

Q. Didn't you say, "I don't remember"? A. June 29th?

Q. Yes. A. Or for June 23rd?

Q. For June 29th. What is your answer? A. I don't remember what I said; I know there was one week that I left for the country, and I did not work for so many hours.

4009

Q. What is your testimony now as to how long you worked during the week ending Friday, June 29th? Does your week end Friday or Saturday? A. Saturday.

Q. Would you say—the week ending Saturday, June 30th, how long did you work? A. You will have to take it day by day, because I cannot tell you the exact amount offhand.

Q. You don't know how many hours you worked that week? A. No.

Q. Do you know how many hours you worked the week before, the week ending Saturday, June 23, 1934? A. I don't remember.

4010

Q. You don't remember? A. No.

Q. Do you remember at one time——

The Court: Excuse me for interrupting, but he testified to all of this on direct examination before.

Mr. Rice: All I propose to do, your Honor, is to lay a foundation for the offering in evidence of this little note.

The Court: But you have already been over that, and he gave us the days and the hours of the week and I calculated them. He said that the note did not represent the hours of the week, but that was the hours that the business was open. You read him the Grand Jury testimony.

4011

Mr. Rice: At that time, your Honor, you will recall that he was my witness.

The Court: Yes.

Q. Didn't you write a note to Mr. Justice of the Agricultural Adjustment Administration, this man right here (indicating), on June 29, 1934, stating as follows: "I worked"——

Mr. Heller: I object to his reading from the note.

4012

Mr. Rice: I am cross examining him now, your Honor.

The Court: If you want to ask him if he wrote that at the time, show him the paper.

Q. Will you look at this little paper, is this in your handwriting? A. It is.

Q. You wrote that? A. I did.

Q. And you wrote that to Mr. Justice? A. Yes, sir.

4013

Mr. Rice: I offer it in evidence.

Mr. Heller: I object.

The Court: You are offering what, the whole letter?

Mr. Rice: Just this little slip. I will tear it off. There is something on the back too that we will take off.

The Court: Of course, that goes to his credibility. Mr. Heller, if you had not interrogated him at all about it it would not be admissible, but now it goes in as to his credibility.

4014

Mr. Heller: But I object because there is no date as to when it was made.

The Court: Oh, yes, there is. He asked him if he made it and gave it to Mr. Justice on June 29th, and he said yes.

Mr. Heller: Very well, your Honor.

(Marked Government's Exhibit 37 in evidence.)

Q. Now, when you made that out for Mr. Justice you were referring to the week prior to the week that Mr. Justice was there? A. The last week.

Q. The week before he was there? A. Yes.

Q. The week ending Saturday, June 23rd, is that right? A. Yes.

Mr. Rice: Gentlemen of the Jury, this exhibit, Government's Exhibit 37, reads as follows: "I worked the following hours last week: Monday, 11 hours; Tuesday, 11 hours; Wednesday, 12 hours; Thursday, 17 hours; Friday, 13 hours, and Saturday, 9 hours, a total of 73." It is signed, "Leo Schimmel."

On the reverse side it says: "They allow me two fowls each week."

That is all.

Redirect examination by Mr. Heller:

Q. Do you punch a clock when you come in to work? A. Never.

Q. And do you make a report out of the time that you come in in the morning and the time that you leave at night? A. No.

Q. And when you gave this information did you tell him that you got time off during the day? A. I did not tell him that.

Q. How many hours of the 73 did you take off for yourself? A. I took about two or three hours each day.

Q. You did not actually work for the firm for 73 hours a week? A. No.

Mr. Rice: If your Honor pleases, I object to this leading of the witness by counsel.

The Court: He certainly is. He is your witness, Mr. Heller, and you cannot cross examine him. You certainly were

4018 doing very well. That was the week ending June 23rd?

Mr. Rice: Yes, or as the indictment says, on or about June 22nd.

The Court: That is all right, I mean it is that week.

Mr. Rice: Yes.

Q. You have written on here Monday 11 hours? A. Yes, sir.

Q. What time did you get in that morning?

4019 A. Seven o'clock.

Q. What did you do when you got in? A. I helped by the scale, and then I entered the charges, which took me about an hour.

The Court: Speak up a little, so the jury can hear you.

The Witness: All around I got through about nine-thirty.

Q. What did you do after that? A. From nine-thirty I went home to a hot lunch, and I got through about eleven o'clock. Then I went

4020 out to make a few collections.

Q. How many collections did you make that day? A. I don't remember offhand.

Q. Approximately? A. Approximately about six.

Q. Six collections. How long would it take you to make those six collections? A. It took me about fifteen minutes for each person, six times that.

Q. That would be an hour and a half? A. An hour and a half.

Q. What else did you do? A. Then I came back to the place, entered by collections, and I sat around a little while.

Q. Did you do anything while you were sitting around there? A. No; I had all my charges entered in the morning.

Q. Did you do any work while you were sitting around? A. No.

Q. How long were you sitting around? A. Until about three o'clock.

Q. Was there any work to be done in the place during the day? A. No other work for me to do. I waited for the poultry to come in, and the union men took it off while I was sitting there, and then they went home, and I went home to 4022
eat.

Q. What time? A. It was about four o'clock. That is the time they go home. Then I came back to the place and I found two customers playing cards, and I was watching them.

Q. When you went home at four o'clock to eat, then you came back and you found two customers playing cards? A. Yes.

Q. Was there any work to be done? A. No, there was no work to be done because I had all the charges entered.

Q. What did you do on Tuesday? A. Tues- 4023
day?

Q. Yes. A. Tuesday I went out and made about ten collections that day.

Q. Yes, but the first thing in the morning. A. The first thing in the morning I did the same thing as on Monday.

Q. That kept you up to about nine o'clock? A. Yes, sir.

Q. When the killing was all done? A. Yes, sir.

Q. What did you do then? A. Then I entered the charges for that day, and that took me up to around ten o'clock entering the charges, and

4024 working by the scale. Then I went out to make collections again.

Q. How many hours did you spend collecting? A. I made about ten collections on that morning, which took me about fifteen minutes for each customer.

Q. Yes. What did you do after that? A. After that I made a deposit and I went out to lunch. I do not remember exactly how much I took for that day; I do not think I came back to the place that day.

4025 Q. You didn't even come back? A. I didn't come back to the place that Tuesday.

Q. What happened on Wednesday? A. Wednesday is a very slow day for the killing, so I got through about eight-thirty. I was all through the charges.

Q. About how many customers were in on Wednesday? A. On Wednesday about half the amount that were in there on Tuesday.

Q. Can you approximate the amount of customers that were in on Wednesday? A. About twenty customers.

4026 Q. When did you get through with them? A. I got through around eight o'clock, I was all through entering my charges by eight-thirty.

Q. Where did you go from there? A. From there I went to lunch, and I had very little collections to make that day. If I remember correctly, I went to see a few customers that were coming in to kill on Thursday.

Q. How long did that take? A. That took me about an hour. Then I came back to the place and I started posting my bills. That took me about an hour. And then I went to eat again, and I came back and I left the car in the place and I went home by one of the customers' cars.

Q. Whose car had you been using during the day? A. The Schechters'.

Q. Pleasure car? A. Pleasure car.

Q. Did you go out for a pleasure ride part of the day?

Mr. Rice: I object. He cannot be paid, compensated, by being given a joy ride by these defendants. That is not the legal test.

Mr. Heller: No, your Honor, whether he was working or going on a pleasure 4028
jaunt.

Mr. Rice: Or whether he was being paid to ride?

The Court: I appreciate all that.

Mr. Heller: I am not bound by what he has said.

The Court: If he had a car, ask him what he did with the car. He isn't their witness; but you are cross examining. He is your witness.

Q. Did you see anybody else besides a customer during the day? A. No, sir. 4029

Q. Did you use any time for yourself during the day? A. Once in a while.

Q. And on Thursday what did you do when you got in? A. On Thursday I had no collections at all. All I did was I worked by the scale practically until about eleven o'clock. Then I went to lunch for an hour and a half and I came back, and I entered a few charges, and I was on the floor all day, no collections at all, except occasionally about four-thirty to five o'clock.

Q. What did you do on Friday? A. On Fridays I worked on the books all day long.

4030 Q. And from what time in the morning? A. From six in the morning until about one o'clock in the afternoon. Then I went to lunch for two hours, ad then I came back at three and I finished up.

Q. Do you know whether that week of June 29th you went to the country? A. June 29th? Well, June 29th I went to the country, but the week previous to that I did not. That was the reason for staying in the place.

Q. You went to the country the week before?

4031 A. I did not go the week before.

Q. Did you come in on Saturday the week before June 29th? A. Yes.

Q. How long did you stay there? A. About five or six hours.

Q. That is all you stayed there? A. That is all.

Q. Can you tell us definitely each and every hour you spent during the week for the firm or for yourself? Can you? A. I just stated to you.

Q. That is definite and certain? A. Definite and certain.

4032 Q. Is that right? A. That is positive.

Q. Then the statement that you worked 73 hours did not take into consideration the time you took off for yourself? A. No, sir.

Q. Is that correct? A. That is correct.

Q. Actually you had never worked 73 hours for the firm? A. That is true.

Recross examination by Mr. Rice:

Q. Now, you have told what you did each day during the week ending June 23, 1934, is that right? A. That is right.

Q. That is what you were just telling us? A. That is right.

4033

Q. Is that week typical of all of the weeks during May, June and July of 1934? A. Yes, they are quite the same.

Q. For every week? A. For every week.

Mr. Heller: Do they kill more——

Mr. Rice: Just a moment.

Mr. Heller: Excuse me.

Q. There was no Jewish holiday that week, was there, during the week ending June 23, 1934? A. I don't think so.

4034

Q. No Jewish holiday? A. No, no Jewish holiday that week.

Q. No special rush of business? A. No.

Q. Just the same amount of business as every other week? A. As every other week.

Q. Didn't you tell Mr. Justice on several occasions that you worked 75 hours a week? A. I don't remember telling him that.

Q. Do you remember talking to him several times about being overworked? A. (No answer.)

Q. Do you remember Mr. Justice was at your place for a number of days? A. Yes, sir.

4035

Q. Do you remember talking to him on several occasions? A. (No answer.)

Q. Speak up. A. I don't remember.

Q. You don't remember talking to him at all? A. I don't remember.

Q. Do you remember talking to him at all? A. He asked me something which concerned bookkeeping, but he did not ask me anything concerning working.

Q. You went to him and complained to him you were working too much, didn't you? A. No, sir.

4036 Q. You complained to him that you were working about 75 hours a week, didn't you? A. No, sir.

Q. You told him that he was from the Code Authority and that you wanted him to do something for you, did you? A. I don't remember.

Q. Didn't you ask him whether he could not do something for you, because you were being overworked? A. I don't remember asking him anything of the kind.

4037 Q. Didn't you tell him you were being underpaid? A. (No answer.)

Q. Didn't you tell this man, Mr. Justice (indicating), on several occasions that you were being underpaid? A. I don't remember telling him anything about money.

Q. Do you remember teling him about the number of hours that you worked? A. Oh, all I remember is writing this note which did not mean how many hours I worked.

Q. Isn't it true that you had complained to him several times and that he told you to put down the number of hours that you had worked

4038 on a slip of paper and he would see what he could do for you, isn't that right? A. No answer.)

Q. Isn't that the way you happened to write this little note? A. That is not the way I wrote the note. The note I wrote simply because he asked me how long I worked last week. That is why I wrote that note.

Q. How did he happen to ask you that, he is an accountant. A. Yes, sir.

Q. He is not interested in the number of hours you work, is he? A. Why did he ask me?

Q. He is just an accountant, isn't he? A. Yes, sir.

4039

Q. And didn't you go to him and complain to him several times that you were working 75 hours a week? A. I did not complain to him.

Q. And he told you to put down the number of hours on a slip of paper and he would see if he could do anything for you, is that right? Is that right or wrong? A. I don't remember why the reason was, that was not the reason I put that down on a piece of paper, whether he could be able to do anything for me.

Q. You know Samuel Cohen, don't you? A. Yes, sir.

4040

Q. One of the workmen? A. Yes, sir.

Q. A member of the union? A. Yes, sir.

Q. Didn't you go to him several times and tell him that you wanted the union to put another man in the place, so that you wouldn't have to work so hard, is that right? A. I don't remember saying that.

Mr. Rice: You don't remember. All right.

Redirect examination by Mr. Heller:

4041

Q. Are you a union man? A. No, sir.

Q. This union counsel speaks of that people like Cohen belongs to, does that refer to him? A. That is right.

Q. You do not belong to that class, do you? A. No, sir.

Q. Did you ever make a complaint to the Code Authority that you were being over-worked or under-worked or over-paid? A. There is the Code Authority, you can ask them.

Q. Did you ever make a complaint to them? A. I never did.

4042 Q. And have you got any complaint against the Schechters? A. No, sir.

Mr. Rice: I object.

Q. Are you satisfied with your job? A. Yes, sir.

Q. You are happy in your job? A. Yes, sir.

Q. You are not here to convict them, are you? A. No, sir.

Q. You are trying to help them? A. That is
4043 right.

Mr. Rice: I will let Mr. Heller withdraw that question.

Mr. Heller: No, I am satisfied with it.

Q. You are even related to the Schechters? A. That is right.

Q. You wouldn't have to go and ask this accountant to help you get more money? A. No, sir.

Q. You know where to get more money if you
4044 want it? A. Yes, sir.

Mr. Rice: I object to these leading questions.

The Court: Yes.

Q. Do you know where to get a raise if you want it? A. Yes, sir, ask the boss.

Q. You wouldn't go to the Code Authority, would you? A. No, sir.

Q. You would go to the Schechters for it? A. Positively.

Mr. Heller: That is all.

Recross examination by Mr Rice:

Q. You say you like your job? A. Yes, sir.

Q. You want to keep your job? A. Yes, sir.

Q. You don't want to lose your job? A. No, sir.

Q. You do not want to get fired, do you? A. No, sir.

Q. You were an enthusiastic witness before the grand jury, weren't you? You sat there before 23 men and told them all about your troubles, didn't you? A. Troubles? 4046

Q. Yes, about your troubles with the Schechters, how the Schechters who are related to you by an in-law relationship were over-working you and under-paying you, didn't you? You told them all about it, didn't you? A. Told who?

Q. The grand jury. A. I don't remember saying anything of that sort.

Q. You do not remember that? You do not remember testifying the number of hours you worked each week, you do not remember that? A. Well, I told you before when I testified there I didn't take into consideration the hours I took 4047 off for lunch, when I testified at that time.

Q. You were asked the number of hours you took off from work each day, weren't you? A. When?

Q. Before the grand jury, weren't you? A. You asked me only how many times I took off at one time, but you didn't ask me how many times I took off for lunch, you asked me how many hours I took off——

Q. We won't go through those grand jury minutes again, we had them up here the other day, but you were asked the total number of

4048 hours that you took from work from the time you got there until the time you left, weren't you? A. As far as I understood it you asked me how much time I took off for each lunch, that is what you asked me.

Mr. Rice: All right, that is all.

Mr. Heller: That is all. Will you bring back those books with that statement?

The Witness: Yes.

Mr. Heller: May we suspend until
4049 Monday to get those records in?

The Court: Yes, but there is only one book there involved.

Mr. Heller: I will offer them later after he completes his figures.

The Court: Gentlemen, do not allow anybody to talk to you about the case, do not discuss it between yourselves, do not form any opinion until it is finally submitted to you. Seriously I make that injunction. It has been requested that we suspend a little earlier today, so come
4050 back Monday morning at ten o'clock.

Adjourned to Monday, October 29, 1934, 10 A. M.

Brooklyn, N. Y., October 29, 1934.

Met pursuant to adjournment at 10:00 A. M.; present as before.

4051

MARTIN SCHECHTER, one of the defendants, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. Heller:

Q. You are one of the defendants in this case? A. I am.

Q. And what company are you connected with? A. The A. L. A. Schechter Live Poultry Corporation.

4052

Q. And where is their place of business? A. 858 East 52nd Street, Brooklyn.

Q. And will you give us the names of the officers of the corporation? A. Yes, Alex Schechter, Aaron Schechter, Martin Schechter.

Q. And Alex is the president, is he? A. That is right.

Mr. Heller: Alex, stand up.

(Defendant Alex Schechter stands up.)

Q. Now who is the next one? A. Aaron is treasurer and I am secretary.

4053

Q. And that is of the A. L. A. Schechter Live Poultry Corporation? A. Yes, sir, that is right.

Q. Now how long have you been doing business at 52nd Street? A. The corporation?

Q. Yes. A. Since January 1st, 1934.

Q. And they are still doing business at that address? A. That is right.

Q. And will you tell us what your duties are, and your brothers' duties are, and the other employes, that is during the months of May, June an July of this year? A. Well, you see Aaron and myself, we come in about six o'clock in the

morning on Mondays and we clean up, we clean up the place until about seven o'clock, when the killing starts. At ten minutes to seven the men come in.

Q. By the men you mean—— A. Abie Danziger, Sammy Cohen, and the shochets, Shochet Gershon and Shochet Weisman.

The Court: What about the bookkeeper?

The Witness: He comes in at seven
4055 o'clock. They come in about ten minutes to seven, they change their clothes. At seven o'clock the killing starts, and we are busy until about 8:30 in the morning. After 8:30, one of the men, Abie Danziger, goes down to the railroad for the poultry, and Sammy Cohen and myself we clean up the place. It takes an hour or two, about 9 or 9:30 we sit down and wait until the stuff comes in about 2 or 3 in the afternoon. It is the same thing every day. About 9:30 Alex Schechter and Leo
4056 Schimmel, they go out collecting. That is all there is for the day.

Q. You mean there is just one killing in the morning? A. That is right, once in a while a customer comes back for another killing, but that very seldom happens except on a Thursday.

Q. And the killing takes place on every day except Thursday from 7 to 9 or 9:30? A. 7 to 8:30.

Q. Then all the work is finished? A. That is right.

Q. Except you clean up the place? A. That is right.

Q. You and Cohen? A. That is right.

Q. You have gone over the books with me the other day? A. I have.

Q. Tell me how many sales were made on Monday, the first Monday in May after May 16th.

Mr. Rice: Just a moment, I object, the books are in evidence and they are the best evidence. It is impossible to check up from this witness's oral testimony.

Mr. Heller: I will withhold that testi- 4058
mony until we get the books, and then I will refresh his recollection and go from week to week and from day to day, and we will have it that way.

The Court: He can point it out in the books.

Mr. Rice: But your Honor, then we would like the same privilege ourselves.

The Court: You have been having it right along, I have let you do it right along, and that is the reason I am going to let them do it. You said it would be 4059
hard for the jury to find it and I let you point it out, and what I let you do I will let them do.

Mr. Rice: Very well.

Q. What is your salary? A. $35.

Q. Each and every week? A. Well, sometimes $30.

Q. You never more than $35? A. No, sir.

Q. Is that correct? A. That is right.

Q. Every week during the month of May? A. The same thing.

4060

Q. And the month of June? A. That is right.

Q. The month of July? A. The same thing.

Q. What does your brother Alexander get? A. The same thing, we all get the same amount.

Q. Each three of the brothers is taking $35 a week? A. Yes, and sometimes $30.

Q. And sometimes $30? A. That is right.

Q. You take no more from the business? A. No, sir.

Q. During this period of time did Joe Schechter take any salary? A. No, he did not.

4061

Mr. Rice: Just a moment, I do not believe that this question of salary is pertinent to any issues in this case.

The Court: It may be about Joseph, I do not know. Joseph wasn't an officer of the corporation, that might be one element.

Q. Did he draw any salary? A. He did not.

Q. Was he an officer of your corporation? A. He was not.

The Court: Was he paid anything at

4062

all?

The Witness: None whatsoever.

Q. What is his connection with your corporation? A. He guaranteed the accounts because we didn't have no credit downtown.

Q. You were so young in the business? A. Well, we were, it will be exactly, December will be two years.

Q. And he guaranteed your accounts at the market? A. That is right.

Q. You paid him nothing for that? A. Absolutely nothing.

Q. When did he get into your business? A. About July 4 or 5, 1934.

Q. Is that the time he closed up at 991 Rockaway Avenue? A. That is right.

Q. Up to that time was he in business at 991 Rockaway Avenue? A. That is right

Q. His own business? A. That is right.

Q. Now, what happens to the chickens then they come into your market house, how are they arranged, what happens to the stacks? A. Well, they come into the market, Abie Danziger is the man that brings them in about two or three o'clock in the afternoon, and Sammy Cohen and myself we give him a hand to take them off. 4064

Q. Take them off where? A. Take it off into the place, take the stuff off, and we place it up and feed it up and then we go home.

Q. Nothing is done until the next morning's killing? A. Nothing is done.

Q. So that the moment that he brings in——

Mr. Rice: Just a moment, I object to this leading.

The Court: Do not lead him. let him tell us himself.

4065

Q. Will you explain how the stacks of chickens are placed? A. Yes. You see when the stuff comes in Sammy Cohen, Abie Danziger hands it down to us, while Sammy Cohen and myself assist in taking it off. We stack them about five high, five coops high, one on top of another and place them against the wall in line. We feed them up, and have them arranged for the work for the next day.

Q. How do you take the chickens out of the coop when they are going to be killed? A. We do not take them out. Sammy Cohen and Abie Danziger, they open up a slat. There are two

long slats on each of the coops, the coops are three by six, and it has got two on each side, and they open up the top slat, and then the customer takes the chickens out and hands them to the shochet.

Q. What particular duties do you do in the place? A. I have got very important duties.

Q. Just tell us what they are? A. I stand by the scale to charge. You see the scale stands outside the premises, and I am always standing by the scale to charge until 8:30; I do not leave
4067 that place.

Q. You charge them in these books? A. That is right.

Q. Defendants' Exhibit I, are these the charge books, is that correct? A. That is right.

Q. You said you stand at the scale? A. That is right.

Q. Where is the scale? A. The scale hangs outside the premises, right outside on the door, but it is on the outside.

The Court: What do you mean, on the
4068 porch?

The Witness: No, you see the place is about 20 by 30——

The Court: Talk up louder.

The Witness: On the outside of the door there is a hook, on the outside where we hang up the scale. It hangs down but it is not in the premises, it is right in between. You see the hook is right in between, and the chickens hang on the outside because the hook hangs right on the door outside.

Q. As you go in? A. That is right.

Q. You charge them as they are put on the scale? A. That is right.

Q. Those are your duties in the place? A. I charge them and I put them in the bags while Leo Schimmel holds the bag for me and ties them up.

Q. Then these charge slips, what happens to those? A. After the killing at about 8:30 they are entered up in the books. It takes about half an hour to put them in. Of course we only have about 15 or 18 charges, and it only takes about half an hour. Leo Schimmel, he puts them in 4070
the books and then goes out collecting, and whatever he does is his time then.

Q. That is all he does? A. That is all he does.

Q. And that is all you do? A. That is all I do.

Q. Charging? A. I charge in the morning until 8:30. After that I clean up the place, it takes about an hour to clean up, and about 9:30 I sit around with Sammy Cohen or we play cards, wait until the stuff comes in about two or three o'clock in the afternoon. Then we help take the stuff off for the next day's killing. 4071

Q. And that ends the day's work? A. That ends the day's work.

Q. Do you do that every day? A. Every day.

Q. Does that end the day's work for everybody? A. Not for everybody, Aaron Schechter goes out collecting, and Leo Schimmel goes out collecting. There is about five or six collections for each of them, that is all.

The Court: Keep your voice up.

Q. What does your brother Alexander do? A. Well, you see he goes out—all these months

4072 you see my brother met with an accident, my brother Joe, you see, and he used to go and do the buying. The only time he come down was once in a while on Thursday or to take the checks downtown, and he stayed through until about ten o'clock, sometimes Friday he come down and stay a while.

Q. Alexander's job is to be at the railroad and buy there? A. That is right.

Q. During the entire month of May that was his job? A. May, June and July.

4073 Q. Up to when in July? A. Well, about the 21st or 22nd. About that, I cannot exactly remember—the date.

Q. Did you on May 16 or on any other day enter into any conspiracy with your brothers to violate the National Industrial Recovery ... A. I did not.

Mr. Rice: I object, and I move to strike out the answer.

Mr. Heller: What is the objection to that?

4074 The Court: I will let him answer.

Mr. Rice: It calls very clearly for a conclusion of law.

The Court: It does, I understand; but what you had better do is ask him what he did, whether he talked, or what they did. That is a pure conclusion as to whether he entered into a conspiracy.

Q. Did you enter into any agreement with anybody to violate any law? A. I did not.

Mr. Rice: I object to that. That calls for the same conclusion.

4075

The Court: The right way, I should think, would be to ask him what he did with reference—whether he had any talk with them, or what are the facts. Whether he entered into a conspiracy is a conclusion. Whether he discussed something with them, that is another thing.

Q. Did you tell your brothers that you were going to violate any law? A. I did not.

Mr. Rice: I object.

4076

Mr. Heller: What is the objection to this?

Mr. Rice: I object to the form of the question.

The Court: Go ahead.

Q. Did you? A. I did not.

The Court: Did you have any discussion with your brothers at all about the way the business was to be run?

The Witness: None whatsoever.

The Court: At no time?

4077

The Witness: No, not about the Code.

The Court: No; I asked you did you have any conversation with your brothers as to how the business is to be run?

The Witness: Well, we ran our business as usual, how the poultry business should be run.

The Court: Go ahead.

Q. What you have done is what you have been doing right along? A. That is right.

Q. For two years? A. Yes.

Q. You have been conducting the business on the same line? A. Same line.

4078 *Martin Schechter—By Defts.—Direct*

Mr. Rice: Just a moment. Counsel should not lead this particular witness.

The Court: He should not.

Q. Did you sell any diseased poultry or poultry unfit for human consumption on June 25 to a Mr. Stauber? A. Well, we never take any diseased poultry into our place.

Q. I did not ask you that. Did you personally sell any diseased poultry to Mr. Staber? A. I never sell any poultry. All I do is charge. I
4079 think if I had the book here, I could look it up. I cannot remember June 25; but if I had the book here I could tell you whether he bought poultry on that day or he did not.

Q. We will wait until we get the books. Did you sell any diseased chickens to Mr. Wagshul on June 27th? A. Well, as far as him being in the place, I do not know, unless I will have the book; and diseased chickens, we never take them in, never had any diseased chickens.

The Court: Do you wait on the cus-
4080 tomers at all?

The Witness: No.

The Court: What?

The Witness: I don't.

The Court: Speak up. Do you wait on customers at all?

The Witness: I don't.

The Court: On either of these days did you wait on Wagshul?

The Witness: No.

The Court: Or did you wait on the other man——

The Witness: My job at the place is just to charge until about 8:30. After

8:30 I clean up the place with Sammy Cohen and then my work ends until about two or three o'clock in the afternoon when the stuff comes in. That is my duties in the place.

Q. Will you take the sales book? Look at Defendants' Exhibit H, and tell us how many sales were made during the first Monday of the week of May 16. A. May 16?

Q. Week ending May 16, the first Monday. A. May 16 or week ending May 16? 4082

Q. First Monday of the week of May 16. A. 16th on a Monday?

The Court: No, that was a Friday, Friday or Saturday. 15th was a Friday, wasn't it?

Q. May 16th was on a Wednesday. Take May 14th then. A. 25.

Q. 25 sales? A. That is right.

Q. And on Tuesday, May 15? A. 20.

Q. 20 sales on Tuesday? A. That is right.

Q. On Wednesday how many sales? A. On 4083 Wednesday?

Q. Yes, next Wednesday, that week. A. That is not the 17th, is it?

Q. 16th is Wednesday. A. 12.

Q. 12 sales? A. That is right.

Q. On Thursday how many sales? A. About 80.

Q. About 80 sales? A. That is right.

Q. How many employees are there there on a Thursday? A. Thursday we get an extra man from the union. You see, that makes it three union men from Local 167. Then we got the two

4084 rabbis. That is five. Aaron and myself is seven. The bookkeeper is eight. That is about all.

Q. You had eight men for the 80 sales? A. That is right.

Q. On Friday how many sales? A. 30.

Q. 30 sales on Friday? A. That is right.

Q. Saturday night? A. 3.

Q. How many? A. 3.

Q. 3 sales? A. Yes.

Q. Go to the following Monday. How many sales? A. What date is Monday?

4085 Q. Just a minute. 21, May 21. A. 21?

Q. May 21, how many sales? A. I don't know. I haven't—I got the 22nd here. There must be some mistake in the date here.

Q. You have May 22nd? A. Yes.

Q. How many did you have on May 22nd? A. 35.

Q. Now, May 23? A. 26.

Q. What is that? A. 26.

Q. 26 sales. May 24, Thursday? A. 59—57.

Q. 57 on Thursday? A. That is right.

Q. On May 25, Friday? A. 36.

4086 Q. And on Saturday, May 26? A. 9.

Q. 9 sales? A. 8 sales.

Q. What did you sell the following Monday, June 4th?

Mr. Rice: If your Honor please, if counsel is going through each week, I think it would same much time if the witness would prepare a schedule showing the total sales each week or each day. I have no objection to that. It seems to me it would be a much more speedy method.

A. June 4th?

Mr. Heller: It takes just a second and we can have it and we will be through. We are interested only in June.

The Court: Counsel was offering you an easy way, but if you want to go ahead, go ahead.

A. (Continuing.) 20. June 4th, was that? 20.

Q. June 4th? A. 20 sales.

Q. Now, on June 5th? A. 25 sales.

Q. On June 6th, Wednesday? A. 19 sales.

Q. On June 7th, Thursday? A. 55 sales. 4088

Q. Now, on June 8th, Friday? A. 16.

Q. On Saturday, June 9th? A. June 9th?

Q. Yes, Saturday night. A. 9.

Q. 9 on Saturday night, is that right? A. That is right.

Q. Now, on Monday, June 11th? A. 30.

Q. Tuesday, June 12th? A. 31.

Q. Wednesday, June 13th? A. 25.

Q. On Thursday, June 14th? A. 15.

Q. On the 15th, which was a Friday? A. 21.

Q. Now, Saturday night, June 16th? A. 5.

Q. Now, on the next Monday, June 18th? A. 4089 18.

Q. On Tuesday? A. 17.

Q. On Wednesday, the 20th? A. 15.

Q. Thursday, the 21st? A. 38.

Q. Friday, the 22nd? A. 23.

Q. Saturday night, the 23rd? A. 13.

Q. Now, the following Monday, June 25th? A. 34.

Q. On Tuesday? A. 24.

Q. Wednesday? A. 14.

Q. Thursday, the 28th? A. 58.

Q. Friday, the 29th? A. 25.

Q. Now, on Saturday night, the 30th? A. 4.

4090 Q. How about July 2nd? A. 16.

Q. And the 3rd? A. 35.

Q. On the 4th? A. 21.

Q. On the 5th? A. That is a Thursday, isn't it?

Q. Yes. A. 91.

Q. On the 6th? A. 23.

Q. On the 7th? A. That is all I got here. Then my brother Joe came in and we opened a different set of books.

4091 Q. Have you got the other books here? A. No, I don't think they are here.

Q. That is all you can testify to from these books? A. That is right.

Q. Now, during all these times when these different sales were made—Monday, let us take the week July 2nd—on July 2nd there were 16 sales made? A. That is right.

Q. And will you tell us how many were working for those 16 sales? A. There was Aaron Schechter and myself, that is two, and two union men——

4092 Mr. Rice: If your Honor please, I do not see the relevancy of this. It seems to be for the purpose of showing that the Schechters were not making a great amount of profit. That is certainly not an issue in this case.

The Court: Well, I cannot assume what it is to be for. I will let him tell about his business. I will overrule the objection.

A. There was 8 people working.

Q. And there were eight people working in the making of those 16 sales? A. That is right.

Q. Now, on Tuesday there were 34 sales? A. Yes.

Q. Will you tell us how many people were working? A. The same amount.

The Court: You have this man Schimmel working on both of those days?

The Witness: I excluded him.

The Court: The three of you, Schimmel, the two laborers and the two shochets?

The Witness: That is right.

Q. Now, on July 4th, when you made 21 sales, 4094
how many people were working? A. We had the same number of people, eight of us.

Q. And on Thursday, July 5th, when you made 91 sales? A. I had my brother Al with us until about ten or eleven o'clock, and we had an extra man from the union.

Q. So you had ten men working in the making of those 91 sales on that Thursday? A. That is right.

Q. And on Friday, July 6th, when you made the 23 sales—— A. Eight of us, and of course my brother Alex was there for an hour or two.

Q. Making those 23 sales? A. That is right. 4095

Q. On Saturday nights, when you made the four or nine or thirteen sales, how many people were working? A. Saturday the man is supposed to come in from one o'clock to ten o'clock of that day, but they don't come in before sunset, when the rabbis get there to kill the chickens. After they are killed they go home. It takes about an hour or an hour and a half, and that is all there is on Saturdays.

Q. That is all there is? A. They are supposed to work nine hours, but they only work about an hour or an hour and a half. We do not keep the

place open all day Saturday; I only let them come in when the rabbis come in, about half an hour before sunset.

Q. Did you at any time use threatening language to Mr. Alampi? A. I have not.

Mr. Rice: I object to that.

Mr. Heller: I think we are entitled to meet that categorically.

The Court: All right, but you can ask him what statement was made. Threatening language is a conclusion. You ask him to state any conversation he had with him, anything he said to him, and anything he heard anybody else say to him, but when you ask him if he used threatening language, that is a pure conclusion. He might think it is threatening and we might not, and the reverse might be true. Let him tell what was said by himself and by anyone else, naming them.

4097

Mr. Rice: I move to strike out the answer.

The Court: Yes, I will strike it out.

4098

Q. May I ask this question then in this form: Did you strike Mr. Alampi? A. I have not.

Q. Did you call him a son of a bitch? A. I did not.

Q. Did you throw him out? A. I did not.

Q. Did you strike Mr. Forsmith? A. I did not.

Q. Did you raise a hatchet to Mr. Forsmith? A. I never handle a hatchet in our place.

Q. Did you ever say to Mr. Forsmith that you are going to kill him? A. I did not.

Q. Did you say to Mr. Alampi, "I will kill you"? A. I did not.

Q. Are you married, sir? A. Yes.

Q. Have you any children? A. Two.

Q. Have you ever been convicted of a crime? A. I have not.

Q. Have you ever been in any kind of trouble? A. No.

Q. Have you ever been arrested in your life? A. No.

Mr. Heller: That is all.

Cross examination by Mr. Rice:

Q. Mr. Schechter, when you spoke of the number of sales that you made on a particular Thursday—— A. That is right. 4100

Q. What was the character of those sales, what kind of sales were they? A. What Thursday?

Q. Well, any particular Thursday that you testified to. We will take the Thursday, the first Thursday that you mentioned. A. What date was that?

Q. Thursday, May 17, that is the first Thursday you mentioned, you said there were 80 sales? A. Yes, sir. 4101

Q. What kind of sales were they? A. Sales to customers, outside of a couple of what we call accommodation purchases that we purchased for Joe Schechter or my father, which I have not included.

Q. You did not include those? A. No, sir; they were not sales, they were accommodation purchases.

Q. Those 80 sales that you did include, what kind of sales were they? A. Sales to customers.

Q. What kind of customers? A. Well, customers that would walk into the place and want to buy chickens.

4102 Q. What kind of customers? A. You want to know who they were?

Q. What sort of business were they in? A. In the poultry business.

Q. Yes; they weren't housewives? A. Oh, no.

Q. They weren't people that came in for one or two chickens? A. No, they were not.

Q. They were people that came in for a cart-load of chickens? A. That is right.

Q. People who themselves were engaged in distributing poultry, is that right? A. That is
4103 right.

Q. People that ran retail stores? A. We only sell to retailers; we do not sell to individual customers, only to butchers or the retail trade.

Q. You do a wholesale business? A. Strictly wholesale.

Q. You do a very large wholesale business, do you not? A. That is according to the weeks; our business is not steady for every week, it goes up or down.

Q. You have what is known as a run-around trade? A. I would not call it that; we have a
4104 steady trade as well.

Q. But you also have a run-around trade? A. Every wholesaler, strictly wholesale business, has chicken dealers who go around, they are not steady customers.

Q. Will you tell us what a run-around business is? A. Chicken dealers will walk into my place and wouldn't like my price, and he would go out again.

Q. He is not a steady customer? A. I wouldn't call him a steady customer.

Q. He is what you call a run-around customer? A. That is right.

Q. You have a great many run-around customers, have you not? A. I wouldn't say that.

Q. You have much more run-around trade than the average wholesale establishment? A. No, we have not.

Q. Isn't it true that when your price is lower than the price of other wholesale slaughter house operators, that you get more of the run-around trade than they do, ordinarily? A. If they come in and are satisfied with the price, they buy, if they do not like it, they walk out.

4106

Q. Your price is not very stable, is it? A. The market isn't stable. It might be fifteen cents today, the market quotation, and tomorrow eighteen cents. We got our prices according to what the market might be.

Q. You are in very keen competition with your competitors, are you not? A. I beg pardon?

Q. You are in very keen competition with your competitors? A. I do not understand that question.

Q. Do you know what competition means? A. I do.

4107

Q. There is a lot of competition between you and your competitors, is there not? A. There is a lot of competition in every other business, the same thing.

Q. Yes, and the competition in the whole slaughter house business is very keen, is it not? A. Well, it is keen in every other business the same way.

Q. Yes, but just answer my questions as to this business. A. Well, in our business, yes, we have competition.

Q. It is very keen competition? A. I wouldn't call it very keen competition, it is competition the same as in any other business.

Q. You try to buy just as cheaply as you can? A. Certainly I do.

Q. And you try to cut your overhead down as much as possible? A. We have got to have union help to unload our poultry, no non-union man is allowed to help the poultry, except union men and myself.

Q. You do keep your overhead down as low as possible, do you not? A. You see, the union——

4109 Q. I am not asking you about the union. A. I can't explain it that way; I have got to explain it.

Q. Just answer my question as to whether or not you do not keep your overhead down as low as you can? A. We try as much as we possibly can, but you see, the union men count the coops, and if there is room for another man, they send in a man without asking us.

Q. Now you have answered that question the way you wanted—— A. That is right.

Q. Now will you answer my question?

4110 Mr. Heller: I object to that.

The Court: He said that they did, he told you what the objectives were, and he said that they kept it as low as they could, but the union sent in another man without asking them.

Q. I see. Aside from the fact that the union sends in additional men, you try to keep all the rest of your expenses down, your bookkeeping expenses, your light, your fuel, and your other expenses? A. I imagine we have the biggest light bill in the industry.

Q. You do? A. Yes, sir.

Q. And you are one of the biggest wholesale slaughter house operators in the industry, are you not? A. We are not.

Q. But you have the biggest light bill in the industry? A. We have.

Q. You try to operate your establishment just as efficiently as possible? A. We try to.

Q. You try to save expenses? A. Everybody would.

Q. Yes, but I am just talking about you, where you can save it? A. We save it where we can, and where we have to pay it we pay it, that is natural. 4112

Q. And you tried to save expenses so you can get your prices down to a reasonable level, don't you? A. If you figure it that way.

Q. Is that right? A. Yes.

Q. That is right? A. Yes, that is right.

Q. You try to offer poultry to your customers just as cheaply as you can and yet make a profit? A. As we can.

Q. That is correct, isn't it? A. Yes, that is right.

Q. Let us go back to some of these sales. You say that you made 80 sales to retail detailers on Thursday, May 17? A. If I said that, that is correct. 4113

The Court: Did you look at the book when you said it? Look at the books. Do not let us have any argument about it. Look and see.

(Witness refers to book.)

The Witness: What day was Thursday?

4114 Q. May 17th. What was the volume of your sales on that day? A. You mean how many pounds?

Q. Yes. A. I would have to have a pencil to figure that out.

The Court: The first question was how many was it, whether it was 80.

The Witness: Yes, that is right.

Q. There 80 customers, is that right? A. Yes——

4115

Mr. Heller: Not 80 customers. 80 sales.

A. (Continuing.) 80 sales. I did not say customers.

Mr. Rice: I object to counsel interrupting.

The Court: I know, but he did not say——

The Witness: I did not say customers. I said sales.

4116

Q. You said sales? A. Yes, sir, customers on Thursday come back three or four times.

Q. Sometimes a customer comes there and selects some poultry out of a coop and—— A. Whatever he buys. You see, but he hasn't got enough poultry for that day because Thursday is a very busy day, so he comes back, kills some more chickens. He kills three or four times on a Thursday.

Q. And sometimes he comes back and buys some of the poultry he rejected the first time? A. No, he don't.

Mr. Heller: I object to counsel saying that. He did not say that.

Mr. Rice: I am cross examining this witness.

The Court: He did not say it. Go ahead.

Mr. Rice: I did not understand your Honor's ruling.

The Court: I did not know there was an objection, but he never said any such thing. He did not say any such thing.

Mr. Rice: No, but I am asking the witness now?

4118

The Court: But you cannot put words in his mouth, even if you are cross examining him. Ask him, but if you say to him, you said so and so, and he did not say that, you cannot do it.

Q. Is it true, Mr. Schechter, that sometimes the customers come there and select poultry in the morning and come later on in the day and purchase some of the chickens that they rejected in the morning? A. They don't. If they rejected them in the morning, they would not take them in the afternoon, see.

4119

Q. You sell the rejected poultry to somebody else, don't you? A. We don't. There is no rejects there.

Q. There are no rejects? A. No, not to my knowledge, you see, because I stay in front with the scale, as I told you, all day long. I do not bother with the sales. I do not mix with the sales. I got a very—you see, my job requires me to stay near the scale all day long, on a Thursday.

Q. On Thursdays? A. Yes.

Q. You are just around the entrance? A. That is right.

4120 Q. You are standing at the scales? A. That is right.

Q. While the scales are made? A. That is right.

Q. All you have to do is lean around the corner and look into the market and see what is happening there? A. My eyes has got to be on the scales all day Thursday.

Q. You do not know what is happening inside? A. No, it is none of my business.

4121 Q. It is none of your business? A. Whatsoever, no.

Q. You do not know how the business is conducted inside? A. Certainly not.

Q. You do not know whether they kill straight or not? A. I do not.

Q. The customers? A. That is not my job.

Q. And you don't know? A. I don't.

Q. Do you or do you not know—— A. I don't know.

Q. (Continuing.) —whether poultry was killed straight as a practice at Schechter Brothers from

4122 May 16, 1934, to July 26, 1934? A. We know we practiced straight killing but as far as I am concerned, I do not know because my position is outside.

Q. You do not know whether they killed straight? A. No.

Q. Or whether or not your establishment killed straight during that period of time?

Mr. Heller: May it please your Honor, he has made him his own witness on this.

The Court: Oh, no, he is not. He is cross examining him.

Mr. Heller: On this line of question-

ing. I have not asked him anything about it. I will give him the witness in charge.

The Court: I cannot help it. I have ruled.

Mr. Heller: Exception.

The Court: Ask him what he knew about it. The man said before he did not know and he has a right to cross examine on it.

Q. You do not know whether straight killing was practiced at the Schechter establishment between May 16, 1934, and July 26th, 1934? A. I don't. 4124

Q. You don't know? A. No.

Q. And you say that the reason that you do not know is because you stood out at the scales just outside the doorway and you kept your eyes on the scales? A. That is right.

Q. And you do not know what happened inside? A. No.

The Court: Did you at any time between May 16th and the date of this indictment make a sale from the coops to any customer? 4125

The Witness: I did not, your Honor.

Q. You testified as to the number of sales on May 17th? A. That is right.

Q. 1934. A. That is right.

Q. And you said there were 80 sales? A. That is right.

Q. How long would it take you to figure up the volume? A. Oh, about 10 minutes, 5 minutes.

Q. Just on that one day? A. That is right.

Q. Have you got any other book showing the total volume of sales that week? A. Yes.

4126 Q. Will you look at that book? A. For the entire week?

Q. Yes. A. Well, we got some accommodation purchases, I would have to exclude them, and I would have to have a pencil just the same.

Q. I am asking you now for the total sales. A. That is what I am trying to give you, the total sales.

Q. Total sales including what you call accommodation sales. A. Including accommodation sales?

4127 Q. Yes, for the week ending May 19th, 1934. A. 48,031 pounds.

Q. Your week ends on Friday, does it not? A. That is right.

Q. Then you were giving us the total for the week ending Friday, May 18th, weren't you? A. That is right.

Q. Instead of May 19th? A. Yes.

Q. And it is 48,170 pounds? A. No, 48,031 pounds.

Q. Oh, I see. I have a slightly different figure from you. 48,031? A. That is right.

4128 Q. Now, will you tell us what was the total volume of sales made during the week ending Friday, May 12, 1934?

Mr. Heller: That is beyond the indictment.

The Court: Friday was the 11th, wasn't it?

Mr. Rice: Yes. I seem to have the 12th. That is correct.

The Court: The indictment ran from the week ending May 11th.

Mr. Heller: Wasn't it May 16th? That was my understanding.

The Court: There have been some items on May 11th.

Mr. Heller: The report was from April 11th.

The Court: That is what he is asking him.

Mr. Rice: We are on a slightly different topic now, not the topic as to the false and fictitious reports; but I am endeavoring to show that the Schechter sales increased by about 50 per cent. immediately after the Code went into effect. 4130

The Court: That is all right.

Q. What was the total volume of sales during the week ending Friday, May 11? A. 31,682 pounds.

Q. 31,682 pounds? A. That is right.

Q. I have a slightly different figure, 31,772 pounds. Can you explain the possible discrepency? There is just a difference——

Mr. Heller: I do not think he has the Government books here. How can he tell? 4131

Mr. Rice: It is possible he may have an explanation for this 90 pounds difference. It is only——

Mr. Heller: We will give you the 90. We will take your figure.

Mr. Rice: It is only a slight difference.

The Court: It is not of very great moment.

Mr. Rice: Not at all.

Q. Now, the Code became effective on May 16, 1934, did it not? A. That is right.

Q. And on the week ending May 18, 1934, your sales were 48,000 pounds? A. That is right.

4132 Q. On the previous week your sales were something like 31,000 pounds, is that right? A. No, close to 32,000 pounds.

Q. Close to 32,000 pounds? A. That is right.

Q. What were your sales the previous week, the week ending May 4, 1934, Friday? A. 34,151 pounds.

Q. 34,151 pounds compared with 48,000 the week ending May 18th? A. That is right.

Q. What were your sales the week ending Friday, April 26, 1934? A. 29,631 pounds.

4133 Q. Now, you say that this total poundage included what you called accommodation sales? A. That is right.

Q. Will you look at your profit and loss statement for the week ending May 18, 1934, that is, the first week we considered? A. Yes.

Q. And see whether or not you did not include the so-called accommodation sales in making up your profit and loss statement?

Mr. Heller: First let us have what his profit and loss is.

4134 The Witness: What week?

The Court: The week ending May 18th.

Q. You told us that your total sales for the week ending May 18, 1934, were 48,031 pounds. Now, you say that that included accommodation sales? A. That is right.

Q. Will you see whether or not you included accommodation sales in making up your profit and loss statement? A. It has got to be included.

Q. You did include it, didn't you? A. Yes.

Q. And you included it every week? A. I don't; the accountant includes it.

Q. He included it every week? A. I suppose he did.

Q. Now, what were the sales,—or, rather, who were the stockholders of the A. L. A. Schechter Live Poultry Corporation between May 16th and July 26th? A. The stockholders?

Q. Yes. A. I don't know that we issued any stock.

Q. It is a corporation, isn't it? A. That is right.

Q. And there are stockholders? A. I don't think there was any stock issued in the corporation. 4136

Q. Have you got the stock record books here? A. I have got the man here that made the corporation for us.

Mr. Heller: Do you want them, Mr. Rice?

Mr. Rice: Yes.

Mr. Heller: I don't think we have them, but the gentleman who formed the corporation is here and can testify.

Mr. Rice: I would like to know who the stockholders were during all that time. 4137

Mr. Heller: You can put the man on the stand, Mr. Rice.

Mr. Rice: I should like to have the appropriate books submitted to this witness while he is on the stand, and then I should like to ask him the appropriate questions as to who are the stockholders or who they were during all that time.

He has already testified who the officers were, and he testified about the paying of salaries to three individuals. Now I want him to tell me who the stockholders were.

4138

The Court: But he has answered that there was no stock issued.

Q. Have you ever seen the stock books? A. I haven't.

Q. You are the secretary? A. Yes.

The Court: Who are the owners of the corporation?

The Witness: Alex Schechter, Martin Schechter and Aaron Schechter.

The Court: Nobody else has any interest in it at all?

4139

The Witness: None whatsoever.

The Court: Whether there is any stock issued or not, is that right?

The Witness: That is right.

Q. How about Joseph Schechter? A. He came in to us on July 4th or 5th.

Q. Did he pay any money in? A. He did not.

Q. He had already paid some money, hadn't he? A. He did not.

Q. Wasn't he a stockholded before July 4th?

4140

A. He was not.

Q. You are sure about that? A. Positive.

Q. Who were the stockholders before July 4th? A. We did not have no stockholders; we did not issue any stock. The corporation belonged to Alex, Martin and Aaron Schechter.

Q. Didn't those three individuals hold stock? A. No, we didn't issue any stock.

Q. Now, Mr. Schechter, you said there were never any diseased poultry in the Schechter premises? A. Never.

Q. Never? A. Never.

Q. Never during May and June, and up to July 26, 1934? A. That is correct.

Q. Never any diseased poultry on the premises? A. That is right.

Q. At any time? A. At any time.

Q. Not even for one minute? A. That is right.

Mr. Rice: That is all.

Redirect examination by Mr. Heller:

Q. Now, your firm also employs an accountant? A. That is right.

Q. That is, besides the bookkeeper? A. That is right. 4142

Q. Now, the week of May 11th, when you sold 48,000 pounds, was that a Jewish holiday? A. Yes.

Mr. Rice: I think you are wrong about the date, Mr. Heller.

Mr. Heller: May 11th.

Mr. Rice: No, it was the week ending May 18th that the 48,000 pounds were sold.

Q. Will you check the records and see when that 48,000 pounds were sold? A. The week ending May 18th, 48,031 pounds. 4143

Q. Do you remember when the Jewish holidays were? A. I think it was the 16th or 17th, but I am not sure.

Q. Now, will you take your books and tell us, take your profit and loss book, how many days are the Jewish holidays? A. Two.

Q. Two days? A. That is right; if I am correct it is from the 14th to the 16th, I am not positive.

Q. Look at your profit and loss book—— A. May 18th?

Q. Week ended May 18th. A. That is right.

4144 Q. What does it show, a profit or loss? A. Profit of $108.

Q. Look at the next week? A. A loss of $10.84.

Q. That is the week ending what? A. May 26th.

Q. And the next week, ending—— A. Profit of $110.77.

Q. The next week? A. Loss of $188.96.

Q. The next week, will you mention the weeks, please? A. Week ending June 9th, a loss of $188.96.

4145 Q. The week ending June 15th. A. Week ending June 16th.

Q. June 16th. A. We make our books on Saturday night.

Q. Yes. A. A loss of $85.89.

Q. The next week? A. Week ending June 23rd, net loss of $197.06.

Q. Loss of what? A. $197.06.

Q. $197.06? A. Yes.

Q. The next week? A. That was the week ending June 23rd, that is as far as we went—no, the week ending June 30th, a loss of $27.03.

4146 Q. The next week? A. Week ending July 7th, loss of $162.78.

Mr. Heller: That is all.

Recross examination by Mr. Rice:

Q. The poultry business was in pretty bad shape? A. Beg pardon?

Q. You were losing money during some of these weeks? A. The books show.

Q. What is that? A. That is right.

Q. And the poultry business was in pretty bad shape? A. That is right.

Q. You say that the week ending May 18, 1934,

4147

included a Jewish holiday; what Jewish holiday was that? A. Shevoth.

Q. What is Shevoth?

Mr. Heller: I do not know that he is competent to testify to that.

Q. You say that there was the holiday of Shevoth? A. That is right.

Q. During the week of May 18th? A. That is right.

Q. 1934? A. That is right.

4148

Q. Now, will you say how much poultry you sold the following week, May 26th? A. Week ending May 26th?

Q. The week ending May 26th?

The Court: The 25th, that would be on a Friday that they ended, 18 and 7 is 25.

Q. Yes, the week ending Friday, May 25th. A. 38,876 pounds.

Q. 38,000—— A. 876—I beg your pardon, 36,876 pounds.

Q. 36,876 pounds? A. That is correct.

4149

Q. That compares with 31,682 during the week ending May 11th? A. That is right.

Q. Before the Code, is that right? A. That is right.

Q. There wasn't any Jewish holiday during the week ending May 25th, was there? A. I do not think so.

Q. All right. Now, how about the next week, the week ending June 2nd? A. The week ending June 2nd?

Q. 1934. A. It can't be June 2nd.

Q. June 1st, is it? A. What date was June 1st, Friday?

4150 Q. Friday, June 1st. Can't you find that? A. Yes, I have got quite a few figures here.

Q. Wasn't it somewhere around 44,000 pounds? A. I have a figure, 44,071 pounds.

Q. 44,071 pounds? A. That is right.

Q. That compares with about 32,000 pounds during the week prior to the Code, is that right? A. That is right, but just a moment. In this particular week we have about 5,000 pounds purchased for Mogen David, and we have much more purchased than the previous week for Joseph Schechter.

4151 Q. How much? A. Approximately at least three to four thousand pounds; for both places, about eight or nine thousand pounds.

Q. But you had a total of 44,000 pounds for that week? A. With accommodation sales, yes.

Q. And there wasn't any Jewish holiday that week, was there? A. No.

Q. How about the next week, the week ending June 9th or June 8th? A. Week ending June 8th, 33,618 pounds.

Q. No Jewish holiday that week, was there?

4152 A. Not the week ending June 8th, no, I do not think so.

Q. How about the week ending June 15th? A 42,500 pounds.

Q. What is that? A. 42,500 pounds.

Q. There was no Jewish holiday that week? A. I do not think so.

Mr. Rice: All right; that is all.

Mr. Heller: That is all.

The Foreman of the Jury: May I ask the witness a question?

The Court: What is it?

The Foreman: In arriving at the profits

and losses for each week did you include officers' salaries as an expense to the business?

The Witness: That is right.

Redirect examination by Mr. Heller:

Q. And your total officers' salary was $105? A. Some weeks $90 and some weeks $105.

Q. Have you got the petty cash book here? A. Yes, sir.

Q. Tell us each week how much each one of you got from May 16th. 4154

The Court: What does that show?

Mr. Heller: Just to show how much he got.

A. About $30, $30 to $35. Some weeks $30, some weeks $35. That was the salary.

Mr. Rice: I have had presented to me a Jewish calendar for the year 1934, which indicates that the so-called feast of weeks, which I am told is Shevoth, was on May 20th and 21st. 4155

Mr. Joseph Schechter: Yes, that is right.

Mr. Heller: Do you want to listen to him? I haven't any objection.

The Court: No, he is not on the stand. The jury will disregard what he says.

Mr. Heller: We are satisfied with the 20th; whatever you give us.

Mr. Rice: That is all.

Q. May 20th and May 21st, Saturday and Sunday—no, May 19th and 20th are Saturday and Sunday, aren't they? A. That is right.

4156

Mr. Heller: What were those holidays?

Mr. Rice: May 20th and 21st.

Q. Now, you don't kill on Saturday, the shochtim did not? A. No, we don't.

Q. So you would have slaughtered the poultry—— A. On Friday.

Q. For that holiday? A. That is right.

Mr. Heller: That is all. That straightens that out.

4157

Mr. Rice: Just a minute.

Recross examination by Mr. Rice:

Q. Let me take a look at the books showing the volume of sales during that week. A. That is Thursday, I told you before, when we had 80 sales. We usually have a 60 on a Thursday.

Q. You say that you had 80 sales on that Thursday? A. That is right.

Q. Which is——

Mr. Rice: What date was that?

4158

The Court: 17th, wasn't it; Friday was the 18th.

Mr. Heller: May 17th.

Q. May 17th? A. That is right.

Q. Now, you had 91 sales on Thursday, July 5th, didn't you? A. 91?

Q. Yes. A. Whatever I said.

Q. Take a look——

Mr. Heller: That is right. That is what he said.

The Witness: Yes.

Q. You had 91 sales on Thursday, July 5? A. That is right.

4159

Q. There was no Jewish holiday that week, was there? A. I don't think so.

Mr. Rice: That is all.

Redirect examination by Mr. Heller:

Q. Was there a strike that week on the East Side? A. That is right.

Q. Now that is why you sold more poultry then? A. The East Side and the Bronx did not take in any poultry. They were compelled to come to Brooklyn, you see, and a lot of people 4160 came down to our place. That was the only week there was a strike there.

The Foreman of the Jury: Your Honor, may we have a recess?

The Court: Yes. Do not let anybody talk to you about the case, gentlemen. You may have a recess for five minutes.

(Short recess.)

LEO SCHIMMEL, resumes the stand. 4161

Redirect examination by Mr. Heller:

Q. Did you make that list for us? A. Yes.

Q. And did you compute the amount of accommodation sales and the price, and to whom they went? A. That's right.

Q. And what was paid for them? A. Yes, and from whom they were purchased.

Mr. Heller: Now, Mr. Rice, do you want him to read it off or will you take a copy of the record he has made?

4162

Mr. Rice: I think it would expedite matters if both sides were to offer resumes.

The Court: That would save time. You can each look them over beforehand.

Q. What is the that third sheet you have there? A. That is the total accommodation sales.

(Discussion off the record.)

4163 Q. What is the total amount of those two sheets, just the top two, accommodation sales? A. 43,589 pounds.

Mr. Heller: All right, we offer those two top sheets in evidence.

The Witness: Read them?

Mr. Heller: No, you do not have to read them.

Mr. Rice: No objection, your Honor.

(Marked Defendants' Exhibit J in evidence.)

4164 Q. Does that exhibit indicate the price that A. L. A. was charged for the merchandise and the price that they recharged them? A. This one?

Q. Yes. A. Yes.

Q. And in each instance it is the same price? A. It is the same price.

Mr. Heller: That is all.

Mr. Rice: That is all.

(Witness excused.)

4165

AARON SCHECHTER, one of the defendants, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. Heller:

Q. Aaron, are you one of the defendants in this case? A. I am.

Q. You are one of the——

The Court: Will you speak up loud enough so that those gentlemen can hear you, because they are interested in it.

4166

Q. You are one of the brothers? A. I am.

Q. Were you in business at 858 East 52nd Street during the months of May and June? A. I was.

Q. Is that correct? A. Yes, sir.

Q. With whom? A. With my brothers Alex and Martin Schechter.

Q. You didn't draw up any formal agreement when you went into business, did you? A. We did not.

Mr. Rice: I object to that as leading.

4167

The Court: Do not lead him.

Q. You trust your brothers? A. I did.

Mr. Rice: I object to that as leading.

The Court: It is leading, ask him questions.

Mr. Heller: All right.

Q. What kind of business were you conducting at 858 East 52nd Street? A. A wholesale slaughter house, live poultry.

Q. What were your duties? A. I was in

4168 charge on the floor, I was the salesman on the floor.

Q. Just what did you do as a salesman? A. Well, I would talk to the customers, sell them poultry and give instructions to the men to kill for the customers.

Q. Who was there every morning with you? A. Sammy Cohen and Abe Danziger. the two rabbis and myself.

Q. And on Thursdays? A. On Thursdays we would get an extra man, and sometimes an extra

4169 rabbi.

Q. And during all other times—— A. I would work with the same people.

Q. Before this time were you connected in any other business? A. I was in the retail business.

Q. Retail what? A. Chicken stores.

Q. Today what business are you in? A. I am in the chicken, retail chicken business again.

Q. You left 858 East 52nd Street? A. I did.

Q. When? A. About six weeks ago to be exact.

4170 Q. And went into the retail business for yourself? A. I did.

Q. During the time that you were with the A. L. A. what salary did you draw? A. $35, $30, and some weeks if business was bad I didn't draw any salary at all.

Q. Did you on June 25, 1934, sell an unfit chicken to a Mr. Stauber? A. I did not.

Q. Did you on June 27, sell two unfit chickens to Mr. Wagshul? A. I did not.

Q. Will you look at these books and tell us whether or not any sale of any chickens was made on June 25th to Mr. Stauber? A. June what?

Q. June 25th.

Mr. Rice: If your Honor please, I object to the form of that question; the books can merely show what entries were made.

The Court: That is what they will show, the entry in the book.

A. There was.

Q. And does that refresh your recollection as to how much poultry was sold to him, and the price? A. Yes.

4172

Q. How much poultry was sold to him? A. There was 211½ pounds sold at 16 cents; and there was 58½ pounds sold at 15 cents, and also 89½ pounds of broilers sold at 22 cents a pound.

Q. What is the range of prices that you sell in, what kind of chickens do you sell? A. There is Indiana poultry.

Q. When you said broiler? A. Yes, broiler?

Q. How is that distinguished from other chickens? A. A broiler is a young chicken, it is a fryer; and fowl is a soup chicken; and broilers at that time of year besides being small, they cost more money than the others.

4173

Q. What other kinds of chickens do you sell besides broilers? A. There is leghorn fowl.

Q. What kind of chicken is that? A. That is a white chicken; it has a small insides, it has got a big comb and they are not very tender.

Q. What is the range of price between those three grades of fowl? A. Well, leghorn fowl sometimes cost as low as 8 or 9 cents a pound, and colored fowl about 14, 15 cents a pound, and broilers 22, 23, 25, sometimes 26 or 27 cents a pound.

4174 Q. Will you look at the book and refresh your recollection as to whether any sales were made on June 27 to Wagshul? A. There was.

Q. Tell us what was sold to Wagshul. A. 138 pounds at 16 cents; 34½ pounds of broilers at 23 cents, and also 19½ pounds of broilers at 23 cents.

Q. You were the one that sold him those chickens? A. I did.

Q. Did you sell him any diseased chickens on that day? A. Never did.

4175 Q. Does it at any time happen that a chicken dies? A. Yes, sure.

Q. What happens to that? A. It is thrown in the garbage can and disinfected.

Q. You don't sell that poultry, do you? A. I don't.

Q. All those chickens that you sold on that day, where did they come from? A. From West Washington—from 60th Street Central, or sometimes from Jersey Central, or from various railroads in New York.

4176 Q. Look at your books and refresh your recollection and tell us how many purchases were made from Philadelphia in the entire year 1934. A. I haven't got the book here.

Q. (Handing book to witness.)

The Court: Do you want the whole year 1934?

Mr. Heller: Yes, because there is only one purchase.

A. Yes, I believe there was only one purchase made in Philadelphia. That week was a very scarce week and I spoke to one of the commission merchants, that, is, my brother Alex spoke

to one of the commission merchants in New York, and he told him poultry is very scarce and we could not get it, and being I am single, I went to Philadelphia——

Q Just a minute. I show you Government's Exhibits 35, 34, 33 and 32, and ask you whether they represent all the poultry that you bought in Philadelphia for the year 1934?

Mr. Rice: Some of that is 1933.

Mr. Heller: 1933?

Mr. Rice: Yes. 4178

Mr. Heller: That should not have been in evidence. I understood these were the purchases made in May, 1934. I do not know what 1933 has to do with this.

Mr. Rice: Dr. Ives was asked to produce all certificates of inspection showing all inspections made for any of the Schechters during the year 1933, or the year 1934 up to a certain date.

A. There is none in here for 1933. I do not see any; I only see 1934. 4179

Mr. Rice: Let me see——

The Court: Those aren't the inspection certificates.

Mr. Rice: Oh, I beg your pardon, I thought they were.

Mr. Heller: These are the purchases from Philadelphia.

The Court: Purchase books that were offered in evidence representing two, I think.

Mr. Heller: Representing a sale from Rabinowitz to the Schechters.

4180

The Court: There were two sales, weren't there?

Mr. Heller: I mean there are several sales slips.

Q. What does this represent, this sale? A. Well, this is the sale of the two cars of poultry that I bought off Mr. Rabinowitz.

Q. You bought two carloads of poultry from Mr. Rabinowitz and these are the charge tickets for those two carloads, is that correct? A. Yes, sir.

4181

Q. Were the two carloads purchased at one time by you? A. Yes, they were.

Q. What is that? A. They were.

Q. One purchase? A. Yes.

Q. And they were shipped in separate trucks to New York, is that correct? A. Yes.

Q. Do you know about how many baskets of that poultry were purchased? A. Well, two cars would be about 500—there is about a hundred and thirty and forty baskets in a car, short, spindle coops.

4182

Q. What is the total, did you say? A. It would be—no, let us see. It would be about over 500 baskets.

Q. Those 500 baskets came to your place of business, did they not? A. They did.

Q. And they represent the merchandise purchased by these Government exhibits? A. That is right.

Q. Is that right? A. That is right.

Q. Was that good and healthy poultry? A. The finest poultry that can come into New York.

Q. Out of those 500-odd baskets I ask you whether this represents a bill for inspection of

346 baskets of those 500 some odd baskets? A. They do.

Mr. Heller: I offer that slip in evidence.

Mr. Rice: No objection. That is already in evidence as a Government exhibit.

Mr. Heller: I would like to have it marked as a Defendants' Exhibit.

The Court: All right.

(Marked Defendants' Exhibit K in evidence.) 4184

Q. Out of the balance of the poultry that came in from Philadelphia, in excess of the 346 baskets, were 53 purchased for Mogen David as an accommodation?

Mr. Rice: I object to the leading.

The Court: Do not lead.

Mr. Heller: I will withdraw the question.

The Court: Ask him questions, but do not lead.

Mr. Heller: Yes, sir. 4185

Q. How many baskets of the balance were purchased for the sole use of Schechter Brothers? A. I do not get that question.

The Crout: Read it.

(Last question repeated by the reporter.)

A. Will you put that question in a plainer form so I can understand you?

Q. I am referring to the balance of one hundred some-odd baskets which were not inspected. How many of those were purchased for the bene-

4186 fit of the Schechter Brothers? A. There was 59 baskets purchased for the Mogen David Live Poultry Company.

Q. What sort of a sale was that? A. An accommodation sale.

Q. Now, the poultry that was inspected, do I understand you to say came from the same carload? A. Exactly.

Q. No question about that? A. No.

Q. Will you tell us why those few baskets were not inspected? A. It came in too late and the
4187 Joint Inspection Service gives service until about seven o'clock only in the evening, and that load came in about nine o'clock, and we could not get any inspection on it and we needed it for Monday morning's killing.

Q. Now, Jack Damsky, was he one of the truckmen? A. Yes.

Q. And he brought in the load? A. He did.

Q. I show you this check and I ask you whether this is in payment of the trucking charges? A. This is in payment of the 50 baskets by the Mogen David Live Poultry Mar-
4188 ket, Inc..

Mr. Rice: No objection; it is already in evidence in Damsky's testimony.

Mr. Heller: I want this in evidence because Damsky said that Joe Schechter paid him and this is to show that somebody else paid him.

The Court: You are offering it in evidence?

Mr. Heller: Yes, your Honor.

Mr. Rice: No objection.

(Marked Defendants' Exhibit L in evidence.)

Q. Did you at any time say you intended to violate the law? A. I did not.

Q. Did you ever threaten to kill Mr. Forsmith?

Mr. Rice: I object to that.

The Court: Overruled.

A. I did not.

The Court: What you ought to do is ask him what was said and what was done. On that day that Mr. Forsmith 4190 was there, let him tell what was said and what was done, who did it. You know, he is your witness.

Mr. Heller: I intended to go into the details, your Honor, after getting a categorical denial first.

Q. Did you at any time stop Mr. Alampi from coming into the premises? A. I never did.

Q. Tell us what happened during the time Alampi was there.

Mr. Rice: What date? 4191

Q. From the day that he came in, June 22nd, from that first day on. A. Mr. Alampi—the first day he came in I asked him who he was and he told me that he was a representative of the Code Authority, and I asked him what business did he want, and he said he was placed on the premises to investigate the conditions of the slaughter house. Well, he showed me a badge that he had—no, I don't think he had a badge the first day, I think he got a badge the second day. He took a notebook and a pencil and he marked down everything that occurred in the

4192 place. He asked to look at the charge books, which he showed him, and he spoke to customers. He left, I believe, about four o'clock that day, in the afternoon, or so, whenever the poultry was in the place. He came back the next day and he had a badge already, and the same thing occurred, he was taking down notes, and he was marking down things and looking at charge books and the prices, and then the same thing occurred, and the poultry came in, and he went home. The next day he came in and he had his notebook
4193 and pencil, and he started arguing with the customers, you know,——

Q. That was on June 27th? A. June 27th, yes, he started arguing with the customers and he in fact insulted one of the customers. He told the customer that he is full of shit, and "I am the Code Authority, and I got a right to do anything I want, and if you don't like it, get out." Well, that hurted me a little bit, to hear that, so I called him aside and I said, "Mr. Alampi, please try and restrain yourself from using language like that, because I will lose my
4194 trade, the result will be that you will chase me out of business." At the end of the killing, the customers went away. I told him, I said, "If you want to come in here like a gentleman, come on in, but otherwise do not come in." The next day he was there, and he got in front of the customers and he watched them kill, right on top of them, you know, and he annoyed the customers, and it was a busy day, Thursday is, and then he got into an argument with one customer, and I heard him say, "You son of a bitch, you are full of shit. I am the Code Authority and I can do anything I want." I was busy, and I do not want to start anything at that

time, so I tried to quiet him down a little bit. Well, when the killing was over on that day, I had an order to deliver. As I went out he said to me, "Abe, where are you going?" And I said, "I am going to deliver an order." He said, "Do you mind if I come along?" and I said, "Sure, come along." Well, we rode to the customer, I believe it was a butcher on Avenue A, and when we were going there I told him, "Why don't you try to be nice?" I said him, "You should not act like that in my place, and I positively will not tolerate the language that you are using, and I don't want you to come in the next day." I said to him, "If Mr. Peterson wants to send somebody else down, it is O. K. with me." Well, he went away, and he came back the next morning. I saw him and I said to him, "Mr. Alampi, didn't I tell you yesterday to tell Mr. Peterson that if he wants an inspector down here in my premises he should send somebody else?" and he said, "Well, they sent me down here." I said to him, "Well, you cannot stay. I told you to tell Mr. Peterson if he wanted anybody down here to send somebody else." With that he went away, and then he came back in a few minutes with an officer. The officer and he came in, and I explained to the officer what had happened in my place, and the officer says to me, "Well, why don't you let him in? He is the Code Authority." I said, "I will not. I am not going to let anybody in here to ruin my business. This is my business and my place, and I am not going to let anybody in who will ruin it." The cop then said to me, "Well, all we can do then is to go back to the precinct and ask my superior officer what to

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4198 do." With that, he went away, and I never seen him again.

Q. Now, did you ever use threatening language toward him? A. I never did.

Q. Did you ever strike him?: A. I never did.

Q. Did you ever lift your hand to him? A. I never did.

Q. Now, about how many days was he there before you told him that he could not come back again? A. Four days.

4199 Q. Now, will you explain how—what happens to chickens when the customers buy them? Do you know what straight killing is? A. Yes.

Q. Explain it, please. A. Straight killing is supposed to be to kill off the coop—the run of the coop as it goes.

Q. Now, what kind of chickens are in the particular coops? A. All different kinds, some are small ones, some large ones, thin-breasted, some fat, some lean, all different sorts of chickens. There are about forty chickens in a coop.

Q. Now, from May 16th on, how did it operate in your business? A. Well, in this way:

4200 A customer would come in either the day before or the morning before the killing, and we would agree on a price, and if it was his turn next, he would go to the man, and he would mark up his coops, and he could say, "This is my coop," because, you see, he would have the number on the coop, like 969 or No. 304, or whatever number that is, that is his number, and he would mark that number on his coop, after he selected his coop, and when his turn came he would go over to the man and start killing. The man would open up the coop with an ax and he would take out four or five chickens and hand

it to her or to him, and they in turn would examine the chickens and hand it to the rabbi to be slaughtered. 4201

Q. Do they reject chickens at any time? A. Very seldom; on very rare occassions.

Q. What happens when they reject chickens? A. Well, I am on the floor and the customer starts to kill, and in case he wants to reject a chicken, I go over and I look at the chicken before it is put back in the coop, and if I see that the chicken could be killed, I give it to the rabbi and I let him kill it. 4202

Q. Well, did it happen during this time that you had to put some chickens back? A. I did.

Q. Tell us why. A. Well, there were some customers that started killing, and on one occasion a man would kill off about fifteen or twenty chickens, and then he would want to reject a chicken, and I would go over and examine the chicken, and it would be a thin-breasted chicken, and I would take it out of his hand and hand it to the rabbi, and he would grab the chicken back from the rabbi before he could kill it, and he would say, "Abe, I don't want this chicken." I would ask him why and he would say, "Well, I am paying here for top price poultry, and I have no trade for that type of poultry, and if I kill that chicken off, it is a thin-breasted chicken, and I am liable to lose about fifty or sixty cents," and I said, "I am sorry, but we are under the Code, and that is straight killing," and then he would say, "Well, all right, if that is the way you feel about it, I will leave you 15 or 20 chickens, and I will go elsewhere." 4203

Q. And under those circumstances you took

4204 them back? A. I had to, because I was losing trade.

Q. Did you at any time have a talk with your brothers together or separately about violating any law? A. Not about violating the law.

Q. Did you have conversations about your business? A. Every day.

Q. Were you ever convicted of a crime? A. Never.

Q. Have you ever had any trouble in your life? A. No.

4205 Q. Were you ever arrested? A. No.

Cross examination by Mr. Rice:

Q. You say you didn't like Alampi's conduct in the Schechter premises? A. Not that I didn't like it, you misunderstand me. I said he was annoying my customers and insulting them.

Q. And you didn't like his conduct? A. His conduct outside of my business I do not know.

Q. You didn't like his conduct at your premises? A. Yes, the way he insulted my customers.

4206 Q. You didn't like the way he talked to your customers on one occasion? A. On several occasions, yes.

Q. On two occasions? A. Yes.

Q. On two occasions he used an unbecoming expression to a customer, is that correct? A. I don't know, two, maybe three occasions.

Q. You have testified as to two occasions, already, have you not? A. Yes.

Q. Any others? A. Yes.

Q. When he used that same expression? A. Yes.

Q. When? A. Well, it was on a Thursday——

Q. Who was the customer? A. 371 Brighton Beach Avenue, Benny Sandler——

Q. Who was the first customer? A. Izzy Cohen.

Q. And who was the second one? A. Wagshul.

Q. When was that? A. On a Thursday.

Q. Who was the third? A. Benny Sandler.

Q. He used the same expression to Benny Sandler? A. Yes, sir.

Q. Are you sure about that? A. Positive. 4208

Q. Any other occasions? A. No.

Q. Did he use any other bad expressions? A. No, not that I know of.

Q. And you didn't use any bad expressions at all, did you? A. No, none whatsoever.

Q. You didn't call him any bad names? A. Never did.

Q. You never called anybody a son-of-a-bitch? A. As far as I can remember, no.

Q. You never called Forsmith a son-of-a-bitch? A. Never did.

Q. Never told him he was a crook? A. Never 4209
did.

Q. Never said that Peterson was a crook? A. I never spoke to Mr. Peterson.

Q. You never told Forsmith that Peterson was a crook? A. Never did.

Q. You never said the whole Code Authority was a bunch of crooks? A. Never did.

Q. You never use any harsh lnaguage? A. At what time?

Q. To anybody any place, is that right? A. I do not think so, no.

Q. You never use curse words, do you? A. Very seldom.

Q. Have you ever called anybody a son-of-a bitch? A. Well, I do not remember; as far as

4210 I can remember I never did; maybe I did but I do not know.

Q. You never remember using any harsh expressions like that to anybody? A. No, I don't remember.

Q. You felt that Alampi was objectionable, that this particular man was objectionable because you felt he was insulting your customers? A. No, just at those particular occasions, otherwise we got along swell.

Q. Otherwise you got along swell? A. Yes.

4211 Q. He just used that bad expression on three occasions? A. Yes.

Q. Otherwise he never used any bad expressions? A. No.

Q. He is a very gentle fellow, isn't he? A. Looks to be.

Q. Very meek? A. As far as I know, I haven't known him long.

Q. Didn't he impress you as a very meek, mild, gentle sort of fellow? A. I don't know what meek means.

Q. Very gentle? A. Yes.

4212 Q. Very kindly? A. Kind?

Q. Yes. A. I don't know.

Q. Weren't you surprised when he used that expression to your customers? A. No——

Mr. Heller: Just a minute, does it make any difference whether he was surprised or not?

The Court: This is cross examination.

Q. It sounded rather unusual to find Alampi use that expression, didn't it? A. I do not know.

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Q. Being a very gentle fellow? A. Maybe he uses those expressions at all times, I don't know hmi, only the short time he was there.

Q. You heard him use it on the witness stand the other day, didn't you? A. Yes, I did.

Q. You heard him testify about this occasion? A. Yes.

Q. You heard him volunteer it without even being asked by Mr. Heller? A. Yes, sir.

Q. He told us what sort of expression he had used on one occasion, didn't he? A. Yes.

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Q. And he said that you had used a much more vile expression that he would repeat, didn't he? A. I didn't use them, Mr. Rice.

Q. You didn't hear him say that? A. Beg pardon?

Q. Isn't it true you had used much more vile expressions than he had? A. Never, no.

Q. Never? A. No.

Q. You said nothing you wouldn't care to repeat? A. Why, I care to repeat it, yes, but I never used anything like that, I care to repeat it, of course, why not.

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Q. Did you feel that Alampi was objectionable on your premises? A. No, he wasn't objected.

Q. Did you feel that Peterson ought to send somebody else down there? A. No, except on the occasion when he insulted my customers, so I told Mr. Alampi, let him go to Mr. Peterson, it is immaterial to me if Mr. Peterson come himself.

Q. You told Alampi to tell Peterson he ought to send somebody else? A. Yes.

Q. That wouldn't use vulgar expressions to your customers? A. Yes, sir.

4216 Q. And Alampi came back the next morning, didn't he? A. He did.

Q. And you wouldn't let him in the place? A. Of course not.

Q. And you called him a lot of names, didn't you? A. I did not.

Q. And you threatened him? A. No, I did not. In fact I spoke to him very nice. I told him, "Please, Mr. Alampi, I told you before you should tell Mr. Peterson to get somebody else."

4217 Q. And Mr. Peterson didn't send anybody else? A. He did not.

Q. He sent Alampi back? A. He didn't.

Q. And you didn't call Mr. Peterson up to complain? A. I beg pardon?

Q. You didn't call Mr. Peterson to complain, did you? A. I did not.

Q. You never spoke a word about this to Mr. Peterson, did you? A. I did not.

Q. You didn't ask that somebody else be substituted for Alampi, did you? A. I told Mr. Alampi to go up to the office and make a report of that statement, I told him to get somebody

4218 else.

Q. In other words you told Alampi to tell Peterson that he wasn't the sort of fellow that you wanted on the premises? A. Absolutely.

Q. And when Mr. Alampi didn't do that you didn't call Mr. Peterson back, did you? A. Well, it was six o'clock in the morning and I do not think Mr. Peterson would be in his office at six o'clock in the morning.

Q. You didn't call him later, did you? A. I didn't call him later, no; I didn't hear of him any more.

Q. You didn't make any statement to Mr. Peterson about this occasion, did you? A. I never had occasion to meet Mr. Peterson.

Q. You never talked about it at all? A. I never did.

The Court: Have you ever talked to him at all?

The Witness: No.

Q. Did you report this to anybody else in the Code Authority? A. No.

Q. And your brothers did not? A. No.

Q. Nobody reported it? A. No.

Q. Nobody complained about Alampi? A. 4220
What do you mean complained?

Q. Nobody complained to the Code Authority about Alampi's conduct? A. No.

Q. You say as to this poultry that came from Philadelphia that was not inspected, it came in about nine o'clock? A. Yes, sir.

Q. You didn't call up for inspection, did you? A. Well, what do you mean I didn't call up?

Q. You didn't call up Dr. Ives' office and ask for an inspector at nine o'clock, did you? A. The office is closed at nine o'clock.

Q. Don't you know, as a matter of fact, that 4221
you could get an inspection at nine o'clock? A. I do not know.

Q. You do not know? A. No.

Q. You didn't try to get it, did you? A. I tried to get it and the office was closed.

Q. Did you call up? A. Yes, of course, and the office was closed.

Q. Did you call up? A. Yes.

Q. You called up that night? A. I called up.

Q. Did you know when you called up that the office was closed? A. Yes, there was no answer.

Q. Did you know before that that the office would be closed? A. I did not.

Q. Did you know what time that poultry was coming in? A. Well, it was supposed to come in on time.

Q. What time was it supposed to get in? A. About six o'clock.

Q. And you had not made any arrangements for inspection, had you? A. Well, we are supposed to stop at Wallabout Market and have it inspected.

Q. And you never told the driver to stop, did you? A. Of course, he knows that. I told it to
4223 him in Philadelphia, to have it inspected.

Q. You told him to stop? A. Certainly.

Q. You were here the other day when the driver testified, Damsky? A. Yes.

Q. You heard him testify that nobody told him to stop for inspection? A. I told him to stop.

Q. You heard him testify to that, didn't you? A. I don't know; maybe.

Q. You don't remember hearing him testify to that? A. Maybe I did, but I told him to stop.

Q. You know he did not stop at Wallabout
4224 Market? A. What?

Q. You know he did not stop at Wallabout Market? A. I don't know. I was in Philadelphia.

Q. That poultry was not inspected the next day, was it? A. We needed it for the morning's killing. We didn't want to be left without poultry.

Q. Just answer my question. Was that poultry inspected the next day? A. Well, I am just telling you.

Q. Was it, yes or no? A. No.

Q. Was that poultry ever inspected in New York, yes or no? A. No.

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Q. You say on some occasions your customers do reject some of the chickens? A. On some occasions, yes.

Q. And sometimes they do not kill straight, is that right? A. I did not get your question.

Q. Sometimes your customers during the period from May 16, 1934, to July 26th,—— A. Yes?

Q. (Continuing.) —sometimes they did not kill straight, is that right? A. On a few occasions, where I had to argue with the customer, either to lose the customer and let the killed chicken remain, or let them reject that one bird, that was a thin-breasted bird.

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Q. They just rejected one bird out of a coop? A. Probably one.

Q. Wasn't it true that sometimes, in fact, wasn't it true that generally your first customers rejected one-third of the birds that they selected? A. Never did.

Q. Isn't it true that when they ordered three coops of poultry they normally rejected about one coop? A. At the most that I can remember is maybe two or three birds; by that, I mean three coops; and sometimes kill them off as they go, the three coops.

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Q. Did you hear Cohen testify here? A. I did.

Q. Did you hear Danziger testify here? A. I did.

Q. Didn't you hear them testify that when a customer ordered about three coops, that he rejected about one coop? A. Never did.

Q. You heard him testify to that? A. I did.

Q. And you say that it was just on rare occasions when the customer rejected one bird? A. One chicken.

4228 Q. One chicken out of a coop? A. One chicken out of a coop.

Q. What did you do with that one chicken? A. And sometimes none.

Q. What did you do with that one chicken? A. Sold it.

Q. You later sold it, didn't you? A. Certainly.

Q. Then you did violate the straight killing provision even on your own statement, didn't you? A. Well, I would not say that exactly. It was—the chicken was a good bird but it was a

4229 thin-breasted bird, and if he paid a high price, he could not sell—he would have to sell that chicken probably below cost and lose money. Therefore, when he rejected that bird I probably sold that bird a couple of cents cheaper, but that bird was a good bird, and I would eat it myself.

Q. And it is your understanding that the straight killing provision prohibits that, does it not? A. It does.

Q. So you were violating the straight killing provision?

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Mr. Heller: He has said what he did.

Q. (Continuing.) Is that right?

Mr. Heller: He said what he did.

The Court: Yes.

Mr. Heller: He said under what circumstances he did it. Now, counsel can draw his own conclusions.

Mr. Rice: I am satisfied with the answer.

Mr. Heller: So am I satisfied.

The Court: He said it.

Mr. Rice: And I do not mean to say I accept the testimony of this witness at all.

Mr. Heller: Oh, I see.

Mr. Rice: That is all.

Redirect examination by Mr. Heller:

Q. Wait a moment. One question. All the other poultry besides these sales, as evidenced by the Philadelphia purchase, all the rest has come from Washington Market? A. Yes. 4232

Q. All inspected poultry? A. Yes.

Q. No question about that? A. Yes.

Q. The only poultry that was not inspected was less than a quarter of the two carloads? A. That is right.

Q. Is that right? A. Correct.

Q. And the rest came out of the same carload? A. Absolutely.

Q. Would you consider that as a sample inspection?

Mr. Rice: I object to his leading.

The Court: You do lead him. He is 4233 your witness, you know.

Mr. Heller: Yes, sir.

Q. Were chickens killed any different before the Code came into effect? A. They were not.

Mr. Heller: That is all.

(Witness excused.)

4234 ALEXANDER SCHECHTER, one of the defendants, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. Heller:

Q. Are you connected with the A. L. A., and for how long? A. I am, for—with the A. L. A. since January 1, 1934.

Q. Are you an officer of the corporation? A. I am.

4235 Q. What office? A. I am president.

Q. What work did you do during the months of May and June? A. I used to do the buying for the A. L. A. Poultry Corporation.

The Court: I cannot hear you. Speak up.

The Witness: I was the buyer for the corporation.

Q. What were your duties as buyer? A. I used to come down Monday, Tuesday and Wednesday about 7:30 or 8 o'clock in the morn-

4236 ing, look around, what do we need for the next morning, pick up the checks, go downtown, buy my poultry, take care of it and ship it home.

Q. And you did that during the months of May and June? A. May, June, until about the 24th or 25th.

Q. Did you have anything to do in the place? A. Thursdays I used to come down five or six o'clock, give them a little hand, look around, what we need for the next morning's killing, and go away. I used to stay until about ten or 11 or sometimes I used to go away nine in the morning, or eight in the morning, when we need poultry for the same day's slaughtering.

Q. Where did you buy that poultry? A. I bought all of my poultry at West Washington Market, New York Central, Jersey Central, Erie, Lackawanna or various places, various railroad poultry freight terminals.

Q. What kind of poultry did you buy there? A. Bought between the top market grade, all according; there was quotations like, fancy, Indiana, western, average, leghorn fowl, ducks, springs; all kinds.

Q. What is the variance in the price between the different poultry? A. It was—there is times in the year, like this time of the year, we have two or three markets, like fancy, Indiana, then we have western, then we have average poultry. The various prices between the top and the bottom is about two or three cents difference. 4238

Q. Do you remember what happened on June 1? A. Yes.

Q. Tell us what happened on June 1, 1934. A. It was on a Friday. I came down to the place about 11 o'clock, I walked in, saw a man in the building, standing in front of the office, I walked right in the office, I met my two brothers, Aaron and Alex—Martin, and I asked who the man was. He says he is from the Code Authority, sent down as accountant to look over our books. I says, "Has he got any credentials?" "No." 4239

Mr. Rice: I cannot hear the witness,

A. (Continuing.) "Has he got any credentials to identify himself, whether he is sent down from the Code Authority?"

He says, "No; the only thing you could is call up Mr. Peterson. He will identify me." Then my brother Joe walked in. He was at that time

4240 visiting the doctors for treatment for his foot. He asked the same question. He got the same answer. The only way that he could identify himself was by calling Mr. Peterson's office. We gave him the phone and he called up Peterson and my brother Joe talked to him. I do not know what the conversation was between them. I know that my brother Joe asked him "Why do you want to examine my books?" and I do not know what the answer was, but anyhow, I know that my brother said to him, "I have to ask my
4241 counselor, and if he tells me that you have the authority to look at my books, I will show them to you."

Q. And what did Joe do at that time with reference to your business—that is, did he have any connection with your business? A. None whatsoever; he had a business of his own at 991 Rockaway Avenue.

Q. And did he guarantee the accounts of your business? A. Oh, yes.

Q. And after that conversation took place did you get in touch with me? A. I did.

4242 Q. And did you hear, on June 1st, Joe, say over the 'phone, "I am violating the Code every day, and I intend to do it"? A. Not to my knowledge.

Q. And you got in touch with me? A. I did.

Q. And what I did you don't know anything about? A. Nothing about it except that you called me up and said that there is a hearing sometime in June.

Mr. Rice: Just a minute. Are we going into the attorney-client conversation stage?

Mr. Heller: Absolutely not.

The Court: No.

Q. I told you about a conference? A. Yes.

Q. Now, did you go with me on June 18th to Mr. Peterson's office? A. Yes.

Q. You and your brother Joe? A. Yes.

Q. What took place over there, if you remember? A. Over there; we came up there about four, between four and five, I don't remember exactly the time. We sat outside for about 15 or 20 minutes. Mr. Peterson was busy inside. Then Mr. Forsmith came out and he said, "All right, you can come in," and I and my brother and the counselor, we went inside. There was sitting there Mr. Loeb, Mr. Dale, Mr. Peterson, Forsmith, and a fellow with eyeglasses, I think his name is Mr. Wexler and a stenographer was sitting there at the next table. We sat down, and the first question I was asked was, which firm I am connected with, and I told them the A. 1. A. Schechter Live Poultry Corporation. Then I was asked who was the officers, and I told him. I told him the kind of business we are doing; and I explained to him. Then they asked me, Joe Schechter, who is he connected with, and then the two lawyers, Mr. Loeb and Mr. Heller, were arguing some law points which I do not understand.

Q. Now, was the question asked you by Mr. Peterson, whether or not you were selling culls to niggers? A. I have no nigger trade, I only do a wholesale business with Jewish people, dealers and butchers.

Q. Thereafter did your firm make reports in accordance with my suggestion? A. Yes, they did.

Q. And did you permit Alampi to come to your premises? A. I did.

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4246 Q. Do you remember when the accountant for the Code Authority—Mr. Justice—do you remember him at your place of business? A. Yes, he was there.

Q. For how long? A. He was there for more than two weeks, wasn't it, Mr. Justice?

Q. Your best recollection, please. A. He was there more than a week, I know, and he left for a few days and he came back again.

Q. Did he have somebody with him? A. Yes, he had another gentleman with him.

4247 Q. And did you offer him the books? A. Oh yes.

Q. What did you do for him? A. Well, I helped him. In case he needed me or the bookkeeper, I always helped. If he does not know what is what, and I knew something about it, I would help him and show him and the other gentlemen would too.

Q. And that was right up to July? A. July, right.

Q. Do you remember the day when Mr. Forsmith came in? A. I do.

4248 Q. June 28th? A. I do.

Q. Tell us what happened on that morning. A. Well, it was a slaughterer's day, and I had about 50 coops left in my premises, so I was not in a hurry to go to the market to purchase for the same day's killing. It was about 9:30 on a Tuesday morning. He walked in with Dr. Gardner, the Board of Health inspector. They came in my premises and they looked through the coops, and as they walked down, Mr. Forsmith called me over and asked me to open up one of the coops, that he wants to look at the poultry. There was a coop of leghorn fowl and

there was another crate where there was about 10 or 12 leghorn fowl. I opened up the coop and he looked at the 12 birds, and he killed about three or four, and he asked me to put them in the waste basket and put disinfectant on them, which I did. He was about to proceed out in the front—that is, Dr. Gardner, I am talking about—and he was stopped by Forsmith, who said, "Aren't you going to write them a ticket?" He hesitated for a moment, and they both went into a conference, and then about two minutes 4250
later he started to write me a ticket. I said, "Why, Dr. Gardner, you know the conditions in every slaughter house in Greater New York. On this day, a slaughter house with 100 coops, on a Thursday, and you can look through them and find more than three, especially leghorn fowls," because at that time it was selling for eight or nine cents market, it was a very low price, and I said, "You are a retailer," I said to Forsmith, "You are a retailer, and you are a member of the industry." I said, "As a member of the industry you are only doing 4251
business about fifteen coops a week, and probably you have five coops on your premises." And I said to him, "Further, I can walk into your place and I could look through and I could find more than three of those kind of leghorn fowl right now." He said, "I am not trying to do anything to you," he said, "I am going to all of the slaughter houses." I said to him, "Well, you are not walking out of here until I get justice. Dr. Gardner did not want to give me out a ticket; for some reason or other you stopped him, and you made him write up a ticket." I said, "Are you trying to ride us?" and he said, "No, you can come with me

4252 and I will convince you, I will do the same thing in every market." He said "I have got to stop over to my brother's place. Do you want to come along?" Well, we stopped off there. It was about ten o'clock already, or a little after ten, and then I changed my mind and I said, "Well, what is the difference? If he feels that way about it, I cannot do nothing about it," so I left him there and I went back to my place of business to take care of it because I had to go downtown to buy some poultry.

4253 Q. Now, did you ever raise a hatchet to him? A. No, I never did.

Q. Did you hold him? A. No; he can go as he pleases.

Q. Did you threaten him? A. No.

Q. Were you ever convicted of any crime? A. No.

Q. Were you ever arrested? A. No, sir.

Q. You are a married man, are you? A. Yes.

Cross examination by Mr. Rice:

4254 Q. Mr. Schechter, at this conference on June 18th—— A. Yes, sir.

Q. You were asked whether you had been killing straight? A. I do not remember.

Q. Do you remember? A. No, we weren't discussing straight killing at all.

Q. Nobody discussed straight killing? A. No, sir, not with me.

Q. As a matter of fact didn't you admit at that conference that you were not killing straight and that you could not kill straight? A. They never asked me the fact about straight killing, and I never said anything.

Q. It wasn't even mentioned? A. No, sir, not straight killing.

Q. How about the sale of diseased chickens, was that mentioned? A. No.

Q. Didn't Benjamin Forsmith at this conference ask you how you got rid of your diseased chickens? A. Benjamin Forsmith never said anything to me, the only one talks to me was Mr. Loeb, and then the two counsel were talking about some matters which I didn't understand.

Q. Didn't you tell Benjamin Forsmith and the other people at this conference that you got rid of your diseased chickens by selling them to the colored trade? A. I do not buy diseased chickens, and I do not sell diseased chickens. 4256

Q. Just answer the question. A. No.

Q. You didn't say that? A. No, sir.

Q. Or anything like that? A. No, sir.

Q. As a matter of fact you do sell to some retailers who do have a colored trade, do you not? A. I do not know, I am in the wholesale business.

Q. You would not say that the retailers who buy your inferior chickens do not have a colored trade? A. I do not know what trade they have. 4257

Mr. Heller: There is no testimony that any retailer buys any inferior chickens, and we are not concerned with what they do with them.

The Court: He has answered, he says he does not know.

Q. You would not say that your retail customers do not have a colored trade? A. I do not know.

Q. You do not know? A. I do not, I am in the wholesale business.

4258 Q. You wouldn't say that some of your chickens do not go to the colored trade, would you? A. I couldn't tell you, Mr. Rice.

Q. You wouldn't say one way or the other, would you? A. I do not know anything about the retail business, I am in the wholesale business.

The Court: We will stop now and take a recess until two o'clock. Gentlemen, do not allow anybody to talk to you about
4259 the case, do not form any opinions until it is finally submitted to you.

(Adjourned to 2:00 P. M.)

Brooklyn, N. Y., October 29, 1934.

Met pursuant to adjournment at 2:00 P. M.; present as before.

ALEXANDER SCHECHTER, resumes the stand:

4260 Mr. Rice: If your Honor please, I will waive further cross examination of this witness.

(Witness excused.)

WILLIAM E. CASEY, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. Heller:

Q. What is your occupation, Mr. Casey? A. Agent, New York Central Railroad, 60th Street Station.

Q. What duties do you perform? A. I have the supervising of all the work done at the station.

Q. Do you have such a thing as waybills at your place? A. We do.

Q. Do you know whether they are available for inspection to everybody? A. They are not.

Mr. Rice: Just a moment, your Honor. I do not see what purpose this is going to serve, excepting to contradict a statement brought out on cross examination of Mr. 4262
Tottis. I submit that it is a collateral issue.

The Court: I won't let it go any further. They are not open to everybody. You brought it out on cross examination. It is purely collateral.

Mr. Heller: I understand that was part of the man's qualifications, examination of the waybills as to what poultry comes in from the different states.

Mr. Rice: No, that was brought out by Mr. Heller. 4263

Mr. Heller: It was part of his qualifications.

The Court: No, it was part of your cross examination, as I remember it.

Mr. Rice: It was entirely new to me when it was brought out on cross examination. It was an additional qualification.

The Court: I will let it stand up to this point.

Mr. Heller: Then am I to understand I cannot go any further?

The Court: No. I will let that stand so that there cannot be any implication

4264 against any of your experts that they might have gotten it. I will let it stand. He said they are not open. I let it stand only because there might be an implication that your people had not pursued it, that is all. We are not going any further than that. When you cross examine anybody as to their credibility, why you are concluded by their answer.

By Mr. Heller:

4265 Q. Does anybody work under you?

Mr. Rice: Just a moment. I object to that.

Mr. Heller: I just want to show I have another witness but I won't put him on.

The Court: All right.

Q. Anybody work under you? A. About 220.

Q. Is the gentleman directly in charge of that phase of it in court today? A. The chief clerk, yes, has charge of the office.

4266 Q. Is he here in court? A. Yes.

Q. Under my subpoena? A. He is.

Mr. Heller: That is all, thank you. You may ask the other gentleman to go home with you.

(Witness excused.)

4267

JOSEPH SCHECHTER, one of the defendants, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. Heller:

Q. What is your occupation, Mr. Schechter? A. Poultry business.

Q. Where did you have your poultry business in the months of May and June? A. Month of May?

4268

Q. May and June, 1934. A. I opened my business on May 23, 1934

Mr. Rice: I cannot hear you.

A. (Continuing.) May 23, 1934, was open to June July 1st or 2nd, I think the 1st. Until July 1st.

Q. At what place? A. At 991 Rockaway Avenue.

Q. Were you there before May 23? A. Yes, I was there until 1934, March 4th.

Q. You had been in business there up to March 4, 1934? A. That is right.

4269

Q. What happened between March 4, 1934, and May 23, 1934? A. I was laying in the hospital with a fractured leg.

Q. When you came back on May 23 you opened the business again? A. Yes.

Q. Where? A. At 991 Rockaway Avenue.

Q. Did you have any connection with 858 East 52nd Street between May 23 and July 3rd? A. No, only troubles.

Mr. Rice: What was that answer?

(Reporter repeated last answer.)

4270 *Joseph Schechter—By Defts.—Direct*

Q. What was your connection with 858 East 52nd Street? A. I guaranteed the account.

Q. That was your sole interest in that business? A. That is right.

Q. Did you draw any salary? A No, sir.

Q. Will you tell us what happened on June 1, 1934? A. I was acquitted from the hospital beginning with April, I was acquitted with a cast——

Q. You mean discharged? A. Discharged from the hospital and I had the cast on until

4271 the middle of May. At around, I think, the 12th or the 14th of May I went down to Dr. Iorson, New York Avenue and President Street, and they took off the cast——

Mr. Rice: If your Honor please, we are not interested in the condition of his leg.

Q. Just come up to June 1st. What happened? A. That is right.

The Court: The condition of his leg

4272 some time during May or June might be of importance.

Mr. Rice: Yes.

The Court: Because there was some talk about canes and things of that kind.

Mr. Heller: Yes.

The Witness: That is right.

The Court: That may be important.

The Witness: Thank you, your Honor.

A. (Continuing.) I was laying home on my—at the time, in the month of May, you know, and in June I could not go out, I only went once, I went Monday, Wednesday and Friday, then three days I went to my doctor for electric treatments,

4273

every day from one o'clock until three o'clock, that was the office hours from the doctor, and by going down with my car was it on Friday, June 1st?

Q. Yes. A. On a Friday, going down from the doctor, I live in 257 Brighton Beach Avenue, going to the doctor I have to pass Kings Highway, going to Kings Highway, there is my brother's place at 858 East 52nd Street, and I stopped there because it was, I think, fifteen minutes after twelve, I had plenty of time yet to go to my doctor, and when I came into the place, walking in from the car to the office on two crutches, when I came into the office, I find my three brothers down there and another gentleman.

4274

The Court: When was this?

The Witness: That was June 1st, on a Friday, your Honor.

A. (Continuing.) When I came in, I asked the gentleman—I asked my brother who is that gentleman. They told me he is from the Code Authority.

4275

"Well, what does he want?" They tell me he wants to look up the books on account of the assessment. So I said, "Has he any credentials, can he show who he is, what he is?"

He said, "No." Let him call up Peterson's office and find out that he is the right man to come in and can look—maybe he belongs in some of the competitors. They called up Mr. Peterson, that is what they say, it is Mr. Peterson, I think they called Canal something, I don't remember the number, what they called, but when they called up that number, I think that my

brother tell me that Mr. Peterson is on the wire. I went the wire is standing where I was standing, with the crutches, there is a desk, on the desk a telephone, near the desk is the telephone, and I was standing, laying on one crutch and I got the telephone in my hand, and I told him, "Mr. Peterson, there is a gentleman here. He said that he is coming from your office and wants to look up the records. I think with, I think with my brothers it is best to let them call up their lawyers and find out first if there is such
4277 a thing that your man has a right to look over the books, maybe it was for some competitor's sake."

Well, he tells me, "You think it is right, call up your lawyer. Go ahead, call him up." And that is what hapened on a Friday afternoon. I think I called you, Mr. Heller, or one of my brothers called you up.

Q. Go ahead, testify what happened. A. You called up, you made arrangements, I think, sometimes, the 8th of June, and that was the 7th or 8th that was on a Friday, when I remember for
4278 sure. I could not go because my foot was swollen and I went down to the doctor, and they had to give me electric treatments, and we postponed it. You called up again and asked for a postponement, and I think that the next thing, what it was, June 8, I think that was the day, Monday, when I remember for sure, it was a Monday, and I am my brother, Alex, and you, counselor Heller, went up to Mr. Peterson's office.

Q. Now, what happened over there? A. Well, when we came there, up to Peterson's office, I was walking with sticks, up on the elevator. When I came down with him Benny Forsmith

was the first man, and he invited us in. He used the courtesy after friendship for twelve years, and he gave me a seat.

Q. Now, you say you knew him for twelve years? A. Yes, for friendship he gave me a chair that I should sit down. I sat down and I waited about twenty minutes, and then we went into the office, where the person was Mr. Peterson. He introduced me to Mr. Peterson because that was the first time I seen him. Mr. Forsmith was in and out, you know, he was not sitting there. Then there was two lawyers, I 4280
think one said the name was Daley and the other name is Mr. Loeb, and I think there was one or two other gentlemen there sitting, and at the next desk there was a girl sitting with a book.

Q. Do you remember what the conversation was between Mr. Peterson and yourself and the others? A. The first thing he asked me is what connection I got with the A. L. A. and I told him the only connection I got for the last two years is I got trouble. I have to guarantee the account, and that is all my interest, and he said, "Well, who are you connected with?" and I said, 4281
"I am connected with 901 Rockaway Avenue."

Q. Did he ask you about the names of the officers? A. He asked me which three brothers belong to the A. L. A., and I told him. They are here.

Q. Was anything said about the salaries for the two concerns? A. He don't ask me nothing of that kind.

Q. Was anything discussed about straight killing? A. Nothing of that kind.

Q. Do you remember anything else that was discussed? A. Well, we were sitting down there, only he asked me about those two questions,

what I do and who I belong to. I think that they are calling him in and out because he was getting up and going out and coming back all the time, and then I heard you, Mr. Heller, you was talking to Mr. Loeb and Mr. Dale. You know—I don't remember exactly what you were talking about with them.

Q. Was anything said about having to pay the assessment whether you lost or not? A. Sure; he told me—I told him, yes, sir it was not a qustion for my place at 991 Rockaway Avenue

4283 because I just went in business, I haven't even sold one chicken. And they asked me I should pay and they asked me about my brothers, and it is said it is not enough that I should guarantee the account, and try everything in the world, and why, after all, should I lose my money, when the boys do not make a living, how in the world should they pay assessments? He told me it is no matter, even when you have to use the commission merchant's money, their assessment must be paid.

Q. Did you at any time say to Mr. Musican

4284 that you were going to use $7,000 of the commission merchants' money—— A. No.

Q. Did you pay me $7,000? A. No, sir, nothing of that kind.

Q. Did you pay me $700? A. No, sir.

Q. Did any of the commission merchants ever give you any money to pay me? A. No, sir, not a nickel.

Q. Did you, on June 28th—no, on July 3rd, raise your hand to Musican? A. What day was that?

Q. Tuesday. A. Can I tell the story, Judge?

Q. Tell us what happened on July 3rd. A. Usually I cannot go into my business—you know,

I was going on crutches and later on sticks, you know there was a gentleman by the name of Mr. Ginsburg, an ex market man. He don't make no living, and I pay my rent in advance for one year for 991 Rockaway Avenue. He came down and told me, "Joe, rent you have got to pay, the only thing is, try to make smaller business."

Mr. Rice: Just a minute now, your Honor. Who is this?

The Witness: This is Mr. Ginsburg.

Mr. Rice: I move to strike out any conversation with a Mr. Ginsburg. 4286

The Court: Strike out what he said to Mr. Ginsburg.

The Witness: I was laying home on the couch, because I cannot move around, and the only thing I can move around is with sticks or crutches.

Mr. Rice: Now, if your Honor please, I object to this constant repetition of his physical condition.

The Witness: Well, it was that way.

The Court: Don't argue.

4287

Q. Continue. A. Well, he told me, "You have to open up the business, how much will you make for yourself? It will be never, well, maybe twenty-five or thirty dollars, how much you can make you know." And Mr. Ginsberg, I told him——

The Court: Never mind what you told him.

The Witness: Well, the only thing I can do is call up the commission men.

Mr. Rice: Just a moment. He is still telling about a conversation with Mr. Ginsberg.

The Court: I told him he could not.

Q. Will you tell us what you did on July 3rd? A. July 3rd?

The Court: Were you running the business there at that time?

The Witness: Mr. Ginsberg was taking care of my place.

The Court: Was it your place?

The Witness: Yes.

4289 The Court: If there was any profit who would get it?

The Witness: Well, he would give me something too, but it was not, that is the whole trouble.

The Court: Well, if there were any losses who paid them?

The Witness: I did.

Q. What happened on July 3rd? A. That was July 3rd—that was the second week in business——

Q. Tuesday, July 3rd? A. Oh, I was already
4290 in business five or six weeks. Maybe I was three weeks in business when the Code Authority sent in a boy by the name of Bob, I don't remember his second name, and I seen him once testifying for a few minutes here, he was a very nice boy, and he came into the place. He don't know from a chicken, and I started in to teach him what a chicken is, and my man and myself teach him what a chicken is, what a rooster is, and what a spring is, and I asked him, "What are you here for?" and he said, "The Code Authority sent me in," and I says, "How long are you on the job?" and he said, "I am assigned to this place the first." He was there about a week, and after

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a week or so, after the week was over, a gentleman by the name of Mr. Musican came around and he told me he was assigned to this market, and he will observe anything that is going on in the market. He came around on a Wednesday and first of all he asked me what a chicken is and what a rooster is, and what a spring is, you know how it is. I said, "Mr. Musican, what was your former business?" and he tells me he was in the lumber business. So, I explained to him what this is and what that is. He observed his

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business nicely. Usually he don't bother nobody, and I don't bother him, and nobody bothers him, and he was a very nice gentleman. Occasionally —no, he would help me to go out because there is a lunch wagon across the street from my place, and we would go in for lunch together. That was getting on until Monday—from Wednesday until Monday. Monday morning he came in—usually—usually when I opened my business I was selling 17,000 pounds, and five weeks later I came down to 9,000 pounds. I told him, "Mr. Musican, what is the use of going around to

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customers and getting affidavits? Come into the place, go on top of the customer, and as individual from a customer on account of that they don't want to be disturbed by you coming into their place of business making affidavits. They don't want to be involved in any lawsuit." I said to him, "They can get chickens, just as good chickens, from my next door neighbors, and without any lawsuit." He told me, he said, "Joe, there is nothing to it, pay the assessment, and everything will be hotsy totsy.

The Court: And that means what?

The Witness: Everything will be O. K., Judge.

4294 Q. Was July 3rd the last day that he was there? A. Was it a Tuesday?

Q. I think so. A. I see him every day after that. He is my best friend, he has got nothing against me.

Q. When did you close your place after July 3rd? A. I think it was July 7th.

Q. That is the time you went out of business altogether? A. Yes.

Q. And the place is closed? A. That is right.

4295 Q. And in whose name is the lease for 991 Rockaway Avenue? A. My brother's name for the last eight years.

The Court: What is the name?

The Witness: Sam Schechter.

Q. I show you this lease and I ask you whether this is the lease? A. That is the lease, and Israel Sagalowitch, he is the landlord.

Mr. Heller: I offer the lease in evidence.

4296 Mr. Rice: I do not see how it is material, your Honor, inasmuch as it is admitted that Joe Schechter owns the business.

Mr. Heller: In so far as the permit is in the name of Sam, and it is the lessee's name——

The Court: I will let you show that, but he said he was running the business.

Q. In whose name is the permit? A. Sam Schechter.

Q. You always had a permit for the place? A. Yes, sir.

Q. And the lease has been under his name, hasn't it? A. Yes, sir.

4297

Q. But you paid the rent? A. That is right.

The Court: You do not need the lease?

Mr. Heller: No, I will put it in for what it is worth.

The Court: You do not need it; he said it was in the name of Sam Schechter.

Q. Do I understand you to say you paid the rent in advance? A. Yes, a month at a time.

Q. Until the place was closed? A. That is right.

4298

Mr. Heller: Your witness.

Cross examination by Mr. Rice:

Q. You did some buying for the A. L. A. Schechter Poultry Corporation before you went in with it? A. When do you mean that, before I break my leg?

Q. Yes. A. Yes, sure.

Q. You did do some of the buying for them? A. Some of them, not much, I went down with my brother Alex——

4299

Q. Then after you recovered you did some of the buying for them again, did you not? A. I recover?

Q. Yes. A. Well, I wasn't down in the market until June 16th, that was the first day when I came to the market.

Q. Do you still do some of the buying? A. Do I still do it?

Q. Did you at that time? A. Some of the buying?

Q. Yes, for the A. L. A. Schechter Poultry Corporation? A. I always buy; it is my name, it is my money, everything is mine.

4300 *Joseph Schechter—By Defts.—Cross*

The Court: We are not talking about 991 Rockaway Avenue, he is talking about 858 East 52nd Street.

The Witness: You wish, your Honor, me to explain——

Q. No, just answer the question. Did you buy poultry for the A. L. A. Schechter Poultry Corporation? A. Did I buy?

Q. Did you buy poultry for them? A. I buy for myself, and I give them, what do you mean
4301 I buy for them? I buy for myself, I buy ten coops, and I tell them, "Here is four for you, two for father, and four for me."

Q. Then you did buy some for the A. L. A. Schechter Poultry Corporation? A. That is right, like I explained to you, Mr. Rice.

Q. And you say you had no interest in the A. L. A. Schechter Poultry Corporation? A. That is what I stated before, troubles I had plenty.

Q. But you had plenty of troubles? A. That is right, I am having them now.

4302 Q. What other troubles did you have? A. That is all.

Q. Just the trouble you had to guarantee their account? A. That is right, and they lose money, I have to pay it.

Q. Did you lose the money? A. I don't lose it, they lose the money.

Q. When you guaranteed the accounts did you lose the money? A. Sure, I have to make good positively, because Joe Schechter's name is good.

Q. How about Alex, Martin and Aaron Schechter? A. They haven't got a penny.

Q. They do not pay you? A. They haven't got a dime to do it with.

4303

Q. What were you supposed to get out of the guarantee? A. What I get out? Nothing but headaches.

Q. Just nothing at all? A. Because they are brothers, one father, you know that—I am sorry there is a girl here.

Q. You say you had no other interest in the A. L. A. Schechter Poultry Corporation? A. I wish I had never even knowed them.

Q. Just answer the question. A. No, sir.

Q. No other interest? A. No, sir.

4304

Q. But yet after you closed your place, you went into the A. L. A. Schechter Poultry Corporation, didn't you? A. There is no use to be—what makes any difference when I have to guarantee this account and they are losing money, what is the use of running two places? I went in there, yes, I have got to see if I can save some of it. That is the best witness, one brother went out, one brother isn't there any more, and when time goes on there will be another brother have to go out.

Q. Don't make speeches, just answer my questions. A. O.K.

4305

Q. You did go with the A. L. A. Schechter Poultry Corporation? A. Surely.

Q. And you are with the A. L. A. today? A. Yes, sir.

Q. You are one of the partners, are you not? A. I don't know how you get it, how you call it partners. Fine partners they are; they haven't got a dime.

Q. You heard Mr. Peterson testify, did you not? A. I heard everybody testify that I take notice of.

Q. You heard him in particular? A. No, sir, it doesn't make any difference.

4306 Q. I say, didn't you hear Mr. Peterson testify? A. No, sir.

Q. You didn't hear him? A. I hear it, yes, I was sitting and I heard him testify, like I heard everybody else testify, but I don't remember Mr. Peterson, he was on the stand the same as I am now.

Q. Did Mr. Peterson tell all of the truth about this conference on June 18th? A. You want to read the testimony, Mr. Rice.

4307 Q. Just answer my question. A. I don't know; you want to read the testimony, I tell you.

Q. Did Mr. Peterson tell anything that did not happen on June 18th at that conference? A. Mr. Rice, you want to read the testimony.

Q. Just answer my question. A. What do you mean, I should answer? How can I answer, because I don't remember what he testified.

Q. You couldn't remember what he testified? A. Of course not.

Q. At the time he testified did everything sound true to you? A. No, sir, oh, he was lying like a race horse, oh, was he lying, like a race

4308 horse he was lying.

Q. Mr. Peterson was lying? A. Oh, Jesus Christ, what lying it was, like a race horse.

The Court: We do not want any more of that.

Q. Mr. Peterson was lying? A. Don't ask me.

Q. And you are telling the truth now? A. Positively.

Q. All the truth? A. (Holding up right hand vertically.) Nothing else but the truth, Mr. Rice, you know it is the truth, you know I am telling the truth.

Q. You heard Mr. Dale testify? A. The counselor, you mean?

Q. Yes, the counselor, a member of the New York Bar? A. What?

Q. Member of the New York Bar, a lawyer. A. Well, does it make any difference? Can he lie?

Q. He lied too? A. I don't know if he lied. You tell me the testimony and I will tell you he lied yes or no; that is not up to me, I am not in the jury box.

Q. Just answer my question. A. I am right here, there is the jurymen, they will tell you he lied yes or no. 4310

Q. Just answer my questions. You heard Mr. Dale testify? A. That is right.

Q. While he was testifying did everything that he said sound true to you?

Mr. Heller: I object to the general statement.

The Witness: I do not know what he is leading me to, he asked me something that I should remember the testimony; there is maybe 400 pages, shall I remember all this? 4311

Mr. Rice: I submit this is proper cross examination.

The Court: Yes, but he says he does not remember it.

Q. Do you remember anything untruthful that he said? A. I tell you before they were lying.

Q. How about Mr. Dale, was he lying? A. I don't remember.

Q. You do not remember any lies that Mr. Dale told on the witness stand, do you? A. I wouldn't say that.

4312 Q. But you do remember lies that Mr. Peterson told on the witness stand? A. Oh, plenty.

Q. Plenty of them? A. Plenty, plenty, plenty.

Q. How about Mr. Musicnn, you heard him testify? A. He don't say anything wrong.

Q. Everything he said was correct? A. Once again, Mr. Rice, you want to read that. Tell me what he said. He said that I came in Tuesday, I find a different Joe Schechter. I wasn't walking down from the car, I was standing right near the door with my car. Mr. Musicnn came down,
4313 and they was only killing off one coop, and you have 16 birds for 5 in the family, so they make a living out of 16 birds? I told Mr. Musicnn, you want me to walk out of here, out of my place, and that is objected to although it is my concern. Where you work can they throw you out, that is the objection.

Q. Have you finished? A. Go ahead, I am finished.

Q. Do you remember anything untruthful that Mr. Musicnn said?

4314 Mr. Heller: I object unless he will specify the question and answer.

The Witness: I think you are right, Mr. Heller.

The Court: It is pretty hard for the witness when he says he does not remember.

Mr. Heller: I don't remember a lot of things myself, and I am supposed to be an attorney.

The Witness: You are not on the witness stand.

The Court: Never mind about your memory, you direct his attention to cer-

tain things. He says he does not remember all the testimony.

Q. You say the health permit was in Sam Schechter's name? A. Correct, for seven years.

Q. And Sam Schechter in May, June and July, 1934, was operating a retail store, wasn't he? A. He is away from the business already, yes.

Q. Just answer my question. A. Yes, yes, that is right.

Q. And you were operating the Schechter Live Poultry Market, Inc. at 991 Rockaway Avenue 4316
during that time? A. Correct.

Q. Is that right? A. Correct, yes.

Q. And there was no permit issued to you during that time? A. No.

Q. And there was no permit issued to the Schechter Live Poultry Market, Inc.? A. No, sir.

Q. During that time? A. No, sir. You want to know why?

Q. No.

The Court: He did not ask you that.

The Witness: All right; thank you, 4317
your Honor.

The Court: Just answer the question.

The Witness: O. K.

Redirect examination by Mr. Heller:

Q. Now, tell us why the permit was not issued to you or the corporation?

Mr. Rice: I object to that. That is not made admissible by my question.

Mr. Heller: We have a right to show the reason, your Honor.

Mr. Rice: That is hearsay.

Mr. Heller: If he knows.

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The Witness: Everybody knows.

The Court: No; he says he is running the business. If Sam Schechter was running the business, that would be another thing. It does not make any difference why he did not get a permit; he did not have one.

Mr. Heller: If your Honor will just let me ask that question, you will see the reason.

4319

The Court: I will hear the reason, but it is not admissible.

Mr. Heller: May I state the reason for it?

The Court: No, the reason why you did not have a permit, you did not have one.

Q. Who started the business at 991 Rockaway Avenue? A. Sam Schechter.

Q. When you started business what happened with reference to the permit? A. You get a lease and you cannot get a permit, only when you have a lease, and Mr. Saglowitch never

4320

wanted to grant me the lease because there is a clause in the lease you have to put up $300 when you resign from one party to the other, and it was no different, because it is my own brother, it was no difference, and I did not want to put no $300 up, and that is the reason why the lease and permit went for seven years on Sam Schechter, and I was doing the business.

Q. And at the present time it is in his name? A. That is right.

Q. Were you ever convicted of any crime? A. Never.

Q. Never been in any trouble? A. No, sir.

Q. Have you a family? A. Yes.

Q. A wife? A. Yes.

Q. Children? A. Yes, a boy, a very nice boy.

(Witness excused.)

HENRY GOLDSMITH, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. Heller:

Q. What is your profession and occupation? A. I am an attorney. 4322

Q. What else? A. I was—I am an accountant also.

Q. Are you also a credit manager? A. I am credit manager for the receivers of live poultry in West Washington Market.

Q. How long have you known each of the defendants seated at the table? A. I would say 14 or 15 years.

Q. Do you know others who know these defendants? A. Hundreds of people who know them. 4323

Q. Have you had occasion to talk to these other people about the Schechters? A. Countless occasions.

Q. Do you know the general reputation in the community of the defendants, first, for peaceableness? A. I do.

Q. What is it? A. Very good.

Q. For quietness? A. Very good.

Q. For law-abidingness? A. Very good.

Q. And for honesty in business? A. Very good.

Q. Have you ever heard anything said bad against them? A. I never did.

4324

Mr. Heller: That is all.

Mr. Rice: No questions.

(Witness excused.)

Mr. Heller: Now, if it pleases your Honor, all with the exception of that one witness, I am ready to rest, and I will not know about that man until about 3:30.

The Court: I think we understood we were going to take a recess until about that time to find out; and if you are going to call him you are going to have him here at that time.

4325

Mr. Heller: That is right.

The Court: If you are not going to, all right.

Mr. Rice: I have one witness that I will be willing to put on out of order, if you wish.

Mr. Heller: Yes, that is all right. That is satisfactory to the defendants. I just reserve my right to call that one witness if he is available; otherwise we will rest on what we have.

4326

The Court: It is left open for you to call that one witness and make any motions you have.

Mr. Heller: Yes, sir.

CLYDE N. JUSTICE, recalled as a witness on behalf of the Government, having been previously sworn, testified further as follows:

Direct examination by Mr. Rice:

Q. Mr. Justice, over the week-end you made

certain analyses of the Schechter books that are now in evidence? A. Yes, sir.

Q. I hand you a schedule which is marked with a red number 1, labeled daily sales by A. L. A. Schechter from May 16, 1934, to June 9, 1934, inclusive, with high, low and average selling prices, and average purchase price, except ducks. Will you tell us just how that was prepared?

Mr. Heller: Before we go into this, the Government Exhibit dates to April, and 4328
for that reason we have had our books rechecked to make ours conform with the April date. Those are the reports which are in evidence. They are dated from April. I do not think he ought to go into May because there is a difference in the dates.

Mr. Rice: We propose to go back to those dates too in another table.

The Court: What is the date of this?

Mr. Heller: He is talking of from May 16. We ought to go back from April, 4329
from the date of the exhibit. That is what we ought to do.

The Court: This is only that part of it.

Mr. Heller: He is going to try to show there is a difference between our figure and theirs.

Mr. Rice: No; I am afraid Mr. Heller is jumping at conclusions.

Mr. Heller: All right, we will see what you want.

Mr. Rice: I think we will have just exactly what you want in just a moment, Mr. Heller.

Mr. Heller: All right.

The Witness: This is a copy of their sales records.

Q. What does it show? A. It shows pounds sold and the amount, and the high price and the low price and the average sales price for each day.

Q. For each day during that period? A. For each day, yes.

Q. Does it show anything else? A. It shows
4331 their average purchase price for the week.

Q. Their average purchase price for the week? A. For the week.

Q. How do you arrive at that? A. By dividing their purchases into the amount of their purchases, pounds into the amount.

Q. Was there any purchase price obtainable from their books? A. No.

Q. The only thing their books showed was the total price paid for all the poultry purchased during the week and the total amount purchased? A. The total amount of pounds and total amount
4332 of money.

Q. So you divided the total pounds into the total amount of money? A. That is right.

Q. That gave you the average price per pound paid for each class of poultry? A. No, for all poultry.

Q. For all poultry? A. All poultry.

Q. Is it divided to any extent? A. No classification.

Q. This was all taken from the Schechter—— A. Books.

Q. (Continuing.) —records? A. Yes.

Q. That are now in evidence? A. Yes.

Mr. Rice: I offer this in evidence.

Mr. Heller: I object unless he can specify the different grades of poultry.

The Court; Just what the books show. If the books show it they can look them over and find the same thing. That is what the books show, your books do not show any division.

Q. As a matter of fact doesn't this show the fowl on one side and—— A. Sales of fowls and broilers but not purchases, the books don't 4334 show it.

Mr. Heller: I object to it, your Honor.

The Court: Meet it with evidence. If the books do not show it they do not. This is only supposed to help the jury by relieving them of the necessity of going through the books and picking out the items. If you want to show it you can show the division.

Mr. Heller: Now I will have to send somebody back to the place and get a 4335 thousand bills to show me the items of merchandise.

The Court: You offered the books in evidence.

Mr. Heller: I don't mind them analyzing my books, but I do mind the witness stating that he has divided the average purchase price without knowing the grade of poultry that was bought.

The Court: He said that is what the books show.

Mr. Rice (to the jury): Government's Exhibit 38 shows that the average pur-

4336 chase price during the week ending May 19th was 16.44 and the average sales price was 17.99.

The following week the average purchase price was 16.60 and the average sales price was 18.47.

The following week, ending June 2nd, the average purchase price was 17.13 and the average sales price 18.61.

The following week, ending June 9th, 1934, the average purchase price was
4337 17.39 and the average sales price was 18.11.

Now, if your Honor pleases, I should like to pass this around to the jury so that they may observe the figures in the last two columns.

Mr. Heller: They should observe every figure on the sheet.

The Court: Yes, look at it all.

Q. I hand you another paper which is marked with red pencil, marked No. 2, headed, "Reports
4338 of the A. L. A. Schechter Live Poultry Corporation to the Code Authority." Will you tell us in what way that table was prepared? A. I copied this from the reports that they made to the Code Authority.

Q. That is, you copied them from Government's Exhibit 30? A. Yes.

Q. Reports to the Code Authority? A. That is right.

Q. And does the table show anything further? A. Only a recapitulation of those figures.

Q. Which is what? A. It shows the totals that they reported from May 7th to June 9th, and it shows the totals that they reported from

4339

May 16th to June 9th and it shows the sales record from May 16th to June 9th.

Q. And what are each of those——

Mr. Heller: Just a minute, I object to that, this is from April 30th and he is talking about June 9th.

Mr. Rice: I can assure Mr. Heller that we will have it all in.

Mr. Heller: I think we ought to have the totals of what he found from April 30th until June 11th.

4340

Mr. Rice: There are other questions in this case besides the question of fictitious reports and this testimony is being directed to the other questions.

The Court: It simply leaves open that which the Government does not cover. As long as it is not outside of the period I will overrule your objection.

Mr. Heller: Exception.

Q. This was prepared entirely upon the basis of exhibits now in evidence? A. Yes.

4341

Mr. Rice: I offer it in evidence.

Mr. Heller: If he will strike out the word sales "not" reported I will have no objection to it. What the jury wants is figures.

Mr. Rice: If we strike out the descriptions of these figures the exhibit would be rather meaningless, your Honor, and I propose to have this witness testify just what he has put down here and what the labels mean.

The Court: You have your reports and then you have these.

4342

Mr. Rice: I will insert the words "sales allegedly not reported."

The Court: If you want to "sales shown by the books" and "sales shown by the reports," but whether they reported them or not is a question for the jury. "Sales shown by the books" and "sales shown by reports" is all right.

Mr. Rice: Suppose we say "additional sales shown by the books" instead of "sales not reported"?

4343

The Court: That would be a correct statement, wouldn't it, Mr. Heller?

Mr. Rice: I will erase this then, your Honor.

Q. Is that a correct description of this last figure "additional sales shown by the books"? A. Yes, sir.

The Court: That involves the question of accommodation sales?

Mr. Heller: Certainly. If he would only take the same date that I do I would

4344

have no objection.

The Court: Well, your objection for it being received in evidence I will have to overrule.

Mr. Heller: Exception.

(Marked Government's Exhibit 39 in evidence.)

Q. Will you look at Exhibit 39 and explain the final figures? A. It shows——

Mr. Heller: Just a minute, it has already been explained. It is in evidence.

The Court: But he changed the reading on it.

4345

Q. What are the final figures shown there? A. A recapitulation from May 16th to June 9th shows that there was reported 109,285 pounds and the sales record——

Q. And during what period of time was that? A. May 16th to June 9th, and the sales records disclose the sale of 160,073 pounds and that shows that there were additional sales on the books of 50,788 pounds.

Q. In addition to what was reported? A. Yes.

4346

Q. Now are there any other recapitulation figures there? A. There is a recapitulation of the sales reported from May 7th to June 9th, but no comparative figures.

Q. I hand you table No. 3 which you prepared over the week-end, labeled "Sales made to certain customers of the A. L. A. Schechter Live Poultry Corporation May 16th, 1934, to June 11th, 1934," and I ask you how you prepared that? A. This was taken from the sales record.

Q. And what do you mean by certain customers? A. Sales made to M. D. L. P.

4347

Q. That is the Mogen David Live Poultry Company? A. It shows on the books as M. D. L. P., and also to Joe Schechter and sales to Sam Cohen.

Q. And how big are those sales? A. One of 4 pounds and the other of 6 pounds.

Q. These are the sales that have been referred to in this trial as acommodation sales?

Mr. Heller: Just a minute. Did I hear the name of Sam Cohen, our worker included there as an accommodation sale? Cohen took the chickens.

Q. Why did you include Sam Cohen? A. Because he was an employee of the business.

4348

The Court (to witness): Was it on the books?

The Witness: Yes, sir, it was.

Q. The sales to the Mogen David Live Poultry Company and Joe Schechter establishment are the sales that have been referred to by the defendants' witnesses as the accommodation sales, are they not? A. Yes, sir.

Q. You were here when the defense witnesses testified regarding those sales? A. Yes, sir.

4349

Q. And you have taken all of these so-called accommodation sales during that period commencing what date? A. May 16th.

Q. To what date? A. Ending June 11th.

Q. You have taken all those accommodation sales? A. Yes, sir.

Q. And added them all up? A. Yes.

Q. What is the aggregate? A. Total 32,997½ pounds.

Q. Therefore you have taken the entire period named in the 38th count of the indictment, that is the period commencing——

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Mr. Heller: Just a moment, please, that is objected to. The exhibit is in evidence.

Mr. Rice: Will you concede that that is the proper period?

Mr. Heller: I concede nothing because you have no right to put that in from April, and you told me to take it up from April and now it is in from May; I am so balled up I do not know where I am.

Mr. Rice: Count 38, the count labeled false reports, alleges that the defendants made false and fictitious reports for the

weeks commencing with the week ending May 19th, 1934, to and including the week ending June 11th, 1934. Now, we have taken that precise period in order to fit the proof to the allegations of the indictment.

Mr. Heller: May I know why that was offered from April 30th? My understanding Friday was that I was to compute it from April 30th in accordance with that exhibit, so what right has he to show this from April 30th, the week from April 30th, and May 7th when his count gives a different date?

4352

Mr. Rice: We have a right to show any particular report was false and fictitious, especially under the conspiracy count.

Q. Now, what was the total of the so-called additional sales during the period?

The Court: He gave you that, it was some thirty-odd thousand pounds.

Mr. Rice: I want to get the dates fixed.

The Court: He has given you that. 4353
Read the questions.

(Record repeated as follows:

"Q. The sales to the Mogen David Live Paultry Company and Joe Schechter establishment are the sales that have been referred to by the defendants' witnesses as the accommodation sales, are they not? A. Yes, sir.

"Q. You were here when the defense witnesses testified regarding those sales? A. Yes, sir.

"Q. And you have taken all of these so-called accommodation sales during that period commencing what date? A. May 16th.

4354 "Q. To what date? A. Ending June 11th.

"Q. You have taken all those accommodation sales? A. Yes, sir.

"Q. And added them all up? A. Yes.

"Q. What is the aggregate? A. Total 32,997½ pounds.")

Mr. Rice: That is enough.

4355 Q. You say you commenced May 16th, going back to Saturday, May 12th, and including Saturday the 12th, Monday, May 14th, and Tuesday, May 15th, can you give me those figures, do you get any different figures? A. I do not have any records beyond May 16th.

Q. Will you look at the Schechter books for that period of time——

Mr. Rice: May we have the books, the books showing the volume of sales for the week ending May 19, 1934?

Mr. Heller: You handled these books, you will probably recognize them yourself.

4356 Q. Will you just read into the record the volume of sales on Saturday, May 12th, Monday, May 14th and Tuesday, May 15th? A. The total volume?

Q. Yes. A. They have not been added.

Q. They have not been added. Are there any added figures at all or would you have to add them? A. They would have to be added.

Mr. Helier: Just look close, they are added, just look very close.

Mr. Rice: We would be very glad to have anybody point it out.

Mr. Heller: He is the accountant, let us see if he can find it.

The Witness: Are these the totals for the day?

Mr. Heller: I do not know, you are the accountant, see if you can find it.

The Witness: I see certain footings on here, I do not know whether they are the total sales for the day or not, I wouldn't know.

Q. Could they be the total sales? A. They could be.

Q. What makes you doubt that they are? A. I 4358
do not doubt it, I do not have any opinion. They probably are the total sales.

Q. How are the total sales shown for other periods? A. All of these have apparently sub-totals to the page.

Q. Will you read those sub-totals? A. Let me see if I can determine it, Mr. Rice, from the recapitulation.

Q. Perhaps you can determine it by comparing some of the figures in the previous exhibit. A. There are all sorts of figures here; I wouldn't want to say whether these are the totals or not. 4359

Mr. Rice: Let me see that last exhibit.

Q. Did you find it? A. I cannot.

Q. You cannot find it? A. No.

Q. Any totals for those days? A. There are figures here, but I do not know whether they are totals or not.

Q. Then will you see whether there are any sales to the Mogen David Live Poultry Company on May 12th, May 14th or May 15th, or any sales—— A. Nothing on the 12th.

4360 Q. Or any sales to Joseph Schechter on May 12th, May 14th or May 15th? A. There are not, no, sir.

Q. Any sales to either of those? A. No, sir.

Q. On those three days? A. That is right.

Q. Is that right? A. That is correct.

Q. Therefore, your table——

Mr. Heller: Just a minute. No "therefores."

Mr. Rice: I withdraw that. I with-
4361 draw the "therefore."

Q. Your table, which is labeled with red pencil mark No. 3, showing the so-called accommodation sales from May 16th, 1934, to June 11th, 1934, inclusive, really shows all of such sales from May 12th? A. That is right.

Q. And not from May 16th, is that right? A. That is correct.

Mr. Heller: Just a minute. I object to the form of the question. I have been accused of making speeches, but I think my
4362 friend can do it equally as well, if not a little better.

The Court: Yes, I think that is so.

Q. If you were to take——

The Court: Look at the 12th, 14th and 15th, and see if you can find any accommodations——

Mr. Rice: There are no so-called accommodation——

The Court: Let him look and see whether he can find any.

Mr. Rice: I understood he did.

The Witness: I did look.

The Court: You asked him three different things. You look at the 12th, 14th and 15th, and see if you can find any accommodation sales on those three days.

Mr. Rice: If your Honor please, none of these ones is implicated as accommodation sales.

The Court: I understand.

The Witness: There are not.

Q. Looking at the sales which you have copied down in your table No. 3, is there anything in the books there to indicate that those sales to the Mogen David Live Poultry Corporation are accommodation sales? A. No, sir. 4364

Q. Is there anything to indicate that the sales to Joseph Schechter during that period of time are accommodation sales? A. No, sir.

Q. What do the books show? A. They appear all to be the same thing, same character of sales.

Q. How do the prices charged to Joseph Schechter and the Mogen David compare with the prices charged by A. L. A. to other customers? A. Well, the prices, all of them, vary, to other customers and to Joe Schechter. 4365

Q. Isn't this true, that on some days you find Joseph Schechter paying more than other customers?

Mr. Heller: Just a moment. I object to that. The books are in evidence and show exactly what we paid. He does not know, he was not there, he has not subdivided it into different grades of chickens.

Mr. Rice: All right; we will point out a few instances.

4366 Q. Will you find several instances when the A. L. A. made sales to Joseph Schechter, and compare the price charged to Joseph Schechter with the prices charged to other customers on that same day? Just pick out a few examples of that.

Mr. Heller: Unless he can say it is the same quality or same grade of poultry, the testimony would be incompetent.

The Court: He testified—he does not
4367 say anything of the kind, because your books, as I understand, do not divide it; all he is testifying to is what the books show.

Mr. Heller: The books speak for themselves.

The Court: We know that, Mr. Heller, but I thought counsel had agreed it would be allowable for them to make extracts of the books to save the jury the trouble of going through all the books.

Mr. Heller: That is correct.

4368 The Court: All this gentleman is testifying to is that the books show certain things. He doesn't know what was sold, except it was poultry of some kind. He is testifying to what the books show, that is all. That is all he can be asked for, because he cannot tell what was sold other than what the books show.

Q. Just pick out a few illustrations. A. Here is one on May 23rd, shows a sale to Joe Schechter of 909 pounds at 14½¢, and it shows a sale to a customer, 969, at 12 cents.

Q. On the same day? A. On the same day.

Q. Is there anything to indicate the quality of the poultry? A. Nothing.

Q. Nothing whatever? A. No.

The Court: That is, to either of them?

The Witness: No, sir, not to either of them.

Q. Pick out a few more. A. There was another sale on the same day of 111 pounds at 8 cents.

Q. To another customer? A. To another customer.

Mr. Heller: What date was that?

The Witness: May 23rd.

The Court: What, first one or the second one?

The Witness: All of those are the 23rd, sir.

A. (Continuing.) M. D. L. P. too, Mr. Rice?

Q. Yes. A. On the 24th there was a sale to the M. D. L. P. of 166 pounds at 25 cents; on the same day there was a sale to No. 157, it looks like, at 24 cents; on June 1st, M. D. L. P. Corporation, a sale at 15 cents; on the same day, a sale to another at 8 cents, and another at 10, another at 12; on June 5th, sale to J. Schechter at 16, and a sale also to M. D. L. P. at 16; sale to another 969, at 4 cents; sale to 317 at 15½.

Q. At four cents? A. At four cents.

Q. Four cents a pound? A. Yes, sir. On June 14th, a sale to the M. D. L. P. at 12 cents, and sale to four others at 12 cents.

Q. Now, never mind picking out any more now. Did you state that table contained on a paper labeled with a red pencil mark No. 3 was

prepared entirely from the Schechter books? A. Yes.

Mr. Rice: I offer it in evidence.

(Marked Government's Exhibit 40 in evidence.)

Mr. Rice: Gentlemen of the Jury, Exhibit 40 is labeled "Sales made to certain customers of the A. L. A. Schechter Live Poultry Corporation, May 16, 1934, to June 11, 1934." The recapitulation at the
4373 bottom shows total sales to these special customers of 32,997½ pounds.

Q. Now, what did you do with that figure of 32,997½ pounds, being all of the so-called accommodation sales during that period—what did you do with those figures? Did you make any computations from that?

The Court: Isn't that purely a matter of argument?

Mr. Rice: I believe it is, your Honor, but I thought it might be simpler to have
4374 him testify as to his computation.

The Court: If he has made the computation, all right, but it is a matter of argument, I think.

Q. Have you made a computation to ascertain how much the sales during that period of time from May 16th to June 9th, 1934, exceeded the amount reported? A. I did.

Q. And those computations are in Exhibit 39, are they not? A. Yes.

Q. And that shows the total amount of poultry reported as being sold during that period of time from May 16th to June 9th was how much? A. 109,285 pounds.

Q. And the amount actually sold? A. 160,073.

Q. Which is a difference of how much? A. Fifty thousand-odd pounds.

Q. Now, this 30,000 pounds were not reported actually sold? A. Yes.

Q. But the total amount of so-called accommodation sales is less than 50,000 pounds, is it not? 4375

Mr. Heller: Now, wait a minute, will you?——

The Court: It is a matter of argument. He says that of the fifty thousand-odd pounds not reported, thirty-odd thousand pounds were accommodation sales. If you take three from five you have two, that is, I imagine so. 4376

Q. Now, you prepared one further table which is marked No. 4 and labeled "Comparative average prices of total sales, and sales to special customers," did you not? A. I did.

Q. How was that prepared? A. From the records.

Q. Just what figures did you use? A. This is made from their sales records, from May 16th to June 11th, which shows an average sales price for the day. It shows the average sales price to certain customers for that day, and it shows the high price for the day and the low price for the day, and it shows the average cost price for the week. 4377

Q. The average cost price for the week of all the poultry? A. Yes.

Q. And that is taken from one of those prior exhibits? A. Yes.

Q. Now, what do you compare that with? A. With their average sales price for the week to the special customers.

4378 Q. To the so-called accommodation customers, is that right? A. Right.

Mr. Rice: I offer it in evidence.

Mr. Heller: The only thing I object to on this is the conclusion of the witness.

The Court: What conclusion?

Mr. Heller: What he found to be the average and what is less and what is more.

The Court: That is a comparison, that
4379 is no conclusion.

Mr. Heller: If your Honor will see, there is some writing there in red (indicating).

The Court: That is what the books show, that is what he says they show, I don't know.

Mr. Heller: He says that he took certain figures from the books and then he juggled them around, and then he came to this conclusion.

4380 Q. Now, that notation in lead pencil at the bottom of the exhibit? A. Yes.

Q. That statement is correct, is it? A. Yes, sir.

Mr. Rice: I offer it in evidence.

(Marked Government's Exhibit 41 in evidence.)

Q. These statements in red pencil, foot-notes explanatory alongside of the column headed "Average sales price to special customers," what is this word "special" what? A. Fowl and broilers.

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Q. "Of fowl and broilers." Your foot-note reads as follows: "Average selling price fowl and broilers combined, all sales made to special customers computed by the weeks." Is that true? A. That is correct.

Q. And your foot-note to the next column, which is labeled, "Average cost of both fowl and broilers," your footnote reads as follows: "Average purchase price of fowl and broilers combined computed by the weeks," is that a correct statement? A. Correct.

4382

Q. What is this figure opposite the last red pencil mark? A. 6; that has no reference to anything, it is merely a memorandum.

Q. This reads: "Prices charged Mogen David Live Poultry Company and Joseph Schechter equal or exceed average price charged to others, almost all prices made to Mogen David Live Poultry Company and Joseph Schechter equal or exceed low prices for the day." Are those statements correct? A. That is correct.

Q. And you have made these statements on the basis of an examination of the exhibits now in evidence? A. That is correct.

4383

The Court: Does he indicate on there who the special customers are?

The Witness: No, sir; I did not.

Q. Who are those special customers? A. Mogen David and Joe Schechter.

Q. And that includes all of the purchases during that period of time from May 16th to and including June 11th to Mogen David and Joseph Schechter? A. That is right.

Q. Is that correct? A. That is correct.

Q. The so-called accommodation customers? A. That is right.

4384 Mr. Rice: Exhibit 41 is entitled "Comparative average prices of total sales and sales to special customers"——

The Court: Don't you think that you had better put on there the names of the special customers?

Mr. Heller: I haven't any objection to their putting down the names.

The Court: I think that would be better; put them in, and then when the jury looks at it, they will know what it is; this way they do not know anything about it.

4385 Mr. Rice: Could we say "so-called accommodation customers"?

The Court: Let him put the names of the special customers out; he can put it in there anywhere, down below, or any place.

Q. Will you write that notation on Exhibit 41, Mr. Justice, or you might put it under here, right here?

4386 The Court: Put it on anywhere, as long as it gets in there; then the jury will know what it means.

(Witness marks on Exhibit 41.)

The Court: Now you can look at it, Gentlemen.

Mr. Rice: I just want to read these eight figures——

The Court: Do you want to look at it?

Mr. Heller: That is all right. I think a juryman wants a recess now.

The Court: We will take a recess. You have offered that?

Mr. Rice: Yes, it is already in evidence.

4387

The Court: It is offered and received without objection. Gentlemen, we will have a recess now for five or ten minutes. Do not allow anybody to talk to you about the case.

(Recess.)

Mr. Rice: Gentlemen of the Jury, Exhibit 41 is entitled "Comparative average prices of total sales and sales to special customers." The special customers are the Mogen David Live Poultry Company and Joseph Schechter. Now, for the week ending May 18, 1934, the average cost of the poultry was 16.14 cents, and the sales price, to so-called accommodation customers, was 16.45 cents. The following week the average cost price was 16.28 cents, and the average sales price was 17.11 cents. The third week, the average cost price was 16.33 cents and the average sales price was 15.75 cents. The fourth week the average cost price was 16.41 cents and the average sales price to these accommodation customers was 17.05.

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Q. Mr. Justice, did you have any conversation with Leo Schimmel while you were at the A. L. A. Schechter Live Poultry Market? A. I did.

Mr. Heller: I object, your Honor, as not proper rebuttal.

Mr. Rice: I submit it is. The defendants called Leo Schimmel to testify on cross examination that he did not go to Mr. Justice and tell Mr. Justice that he was being over-worked and that he wanted

4390 Mr. Justice's help. That is not a collateral issue.

Mr. Heller: It was your cross examination, not mine.

Mr. Rice: Yes, but this, your Honor, is a direct issue in the case.

The Court: I do not see that you can examine on that now. You have the slips that he gave to Mr. Justice in evidence.

Mr. Rice: But I should like to show, your Honor, that Leo Schimmel went to

4391 this witness on several occasions.

The Court: I don't think you can. They did not show it. You on your cross examination asked him about it, and it goes to his credibility.

Mr. Rice: Does your Honor make the same ruling with respect to a conversation that Leo Schimmel had with Mr. Justice just three days ago? We should like to prove——

The Court: I do not see how you can

4392 do that; this is not in the presence of these defendants, and they are not bound by it. You asked him questions on cross examination and he gave you answers. I think you are concluded by that, and it goes to his credibility, but I do not think you can show a conversation with him——

Mr. Rice: That may very well be right, your Honor. May I state it this way to your Honor? On direct examination of Mr. Schimmel, Mr. Heller brought forth the statement that Schimmel was not overworked and that he worked when he pleased, and that the Schechters did not

require him to work any particular hours, and that he was treated well. Now, on cross examination I pressed that question further, and I asked him whether it was not true that he went to Mr. Justice to complain that he was being over-worked and that he was working seventy-five hours a week, and getting underpaid, and that he wanted the Code Authority to do something about it.

Mr. Heller: His answer was no, and 4394
you are bound by it.

Mr. Rice: I was required to ask those questions in order to lay a foundation for contradicting it. I can contradict him on the ground that he was testifying as to a direct issue in the case and not a collateral issue. It is for that reason that I submit that we should be permitted to offer the conversation.

The Court: I don't see how you can.

Mr. Rice: Very well.

The Court: You have the slip, that is 4395
in evidence, and I don't think you can interrogate on that.

Cross examination by Mr. Heller:

Q. When you testified on direct examination the other day you gave us the following two figures: Reported, 106,659 pounds, and sales made and computed by you, 115,861 pounds. What was wrong? Was there anything wrong with those figures? A. On my previous examination I was quoting from a schedule which I made which did not include the sale of ducks.

4396 *Clyde N. Justice—By Govt.—Cross*

Q. So when you made a copy of the records of the Schechters you left out the items of ducks? A. I included only the fowls and broilers, by instruction.

Q. Now, you went back and you found an item that you had left out? A. I didn't find it; I knew it was there all along.

Q. You didn't include it? A. No, not in the first analysis.

Q. Is a duck poultry? A. It is duck.

4397 Q. Well, is it considered poultry?

Mr. Rice: We will concede that it is.

Q. Did you have any particular reason for leaving it out from your records? A. On my first analysis I was asked to make an analysis of fowl and broilers only.

Q. That is all? A. That is all.

Q. And since that time did you have the defendants' books in your possession? A. I had a copy of them.

Q. The copy that you offered in evidence the

4398 first time? A. That is right.

Q. What you had in your possession is Exhibit 36, is that correct? A. That is right.

Q. And from this record, Government's Exhibit 36, you reconstructed these different exhibits that you offered in evidence before, is that correct? A. That is correct.

Q. You did not reconstruct these exhibits from the books themselves? A. I reconstructed them from my transcript of the books.

Q. From your own transcript? A. That is right.

Q. And did your transcript contain the number of ducks? A. That is right.

Q. It did contain it? A. Surely.

Q. At the time you made it? A. Surely.

Q. Will you look at your records, Government's Exhibit 36, and tell us what was sold to M. D. L. P. Corporation on June 11th, 1934? A. June 11th?

Q. Yes. A. M. D. L. P.?

Q. That is right, June 11th. A. Here is one sale of 987 pounds, and 167 pounds.

Q. And do you know at what prices these items were sold? A. The 987 pounds were sold at 14½ cents, the 167 pounds were sold at 21½ cents. 4400

Q. Do you know what kind of poultry that was? A. I have no idea, except it says fowl and broilers.

Q. Then there is something said in the books about broilers and fowl? A. Yes, they are segregated.

Q. They were segregated? A. Yes.

Q. And your computation was made by taking into consideration the total amount of fowl and the total amount of broilers, adding the prices and taking the average? A. Some computations were, some were not. Some were made separate as to fowl and broilers. 4401

Q. Can you from your exhibits tell us the total number of poundage of fowl sold to Joseph Schechter or to the Mogen David? A. Yes.

Q. You have such a computation? A. Yes.

Q. And you have a computation for the average price of the total amount of fowl separate and apart from the other? A. Right.

Q. All right, show us that. A. On June 11th the same sale, 987 pounds of fowl at 14½ cents, 167 pounds of broilers at 21½ cents.

Q. You added the two together? A. No, I have them separate.

Q. Did you add all of the broilers in one—did you add them altogether in one column? A. All the sales?

Q. Yes, all the sales to Mogen David. A. Yes; they sold 6,395½ pounds of broilers, and they sold 26,602 pounds of fowl.

Q. Have you got the specified price for each sale alongside those figures? A. Yes.

Q. From day to day? A. Yes.

4403 Q. Also with reference to broilers? A. Yes, sir.

Q. Haven't you them? A. That is correct.

Q. Now, give us the average price sold for each separate quality of merchandise. A. I can figure it for you.

Q. Did you figure it up? A. No.

Q. You haven't figured it up? A. No, I haven't figured it up. Do you want me to?

Q. You haven't compiled those figures? A. No, I have not done that but——

Q. Just a moment, we will come to that. What
4404 figures have you compiled? A. Well, here is a schedule that shows the daily sales from May 16th to June 11th, and that shows the pounds sold each day, the amount, the high price for the day, the low price for the day and the average price for that day.

Q. Does that show the high price paid for fowl as distinguished from ducks? A. I do not show in this schedule duck at all.

Q. Does it show the difference in price between fowl and chickens? A. I have it between broilers and fowl which is all their books show.

Q. You have no distinction between fowl and chickens, have you? A. The books do not mention chickens.

Q. Did you ever in your life see a sales slip, did you ever see a sales slip? A. Oh yes.

Q. Did you ever look at those? A. Never made any particular examination of them, I have seen them.

Q. Did you ever examine anything else but poultry books? A. Oh yes, I have examined——

Q. You are an accountant? A. Yes.

Q. Did you ever see department store books? A. Yes, sir.

Q. Do you know what a sales ticket is? A. 4406
Yes, sir.

Q. You look at a sales ticket in order to ascertain the price merchandise is sold for? A. Yes.

Q. Did you examine those of Schechters? A. I looked at a few of them, not many, I test-checked a few of them.

Q. What do you mean by test-checked? A. I examined a few to see if they agreed with the sales book, and they did.

Q. Just a few? A. Just a few.

Q. You remember how many they had there of those sales tickets? A. They had quite a lot 4407
of them.

Q. Quite a number? A. Yes.

Q. Take a look at one of them, let us take June 8th, tell us what this sales slip represents. A. What is on it?

Q. Yes, what does it represent? A. It shows so many pounds of Rock broilers.

Q. At a certain price? A. Well, I don't know —yes, I see the price now.

Q. What else does it show? A. That is all that this one slip shows.

Q. Will you let me see it? A. The pounds, the price and the classification, Rock broilers.

Q. Is that all that was sold that day? A. Well, there is three items of Rock broilers.

Q. There are three kinds of Rock broilers, are there, at three different prices? A. Well, I do not know whether that is there are three different items.

Q. There are three different items that appear on that sales slip? A. Three entries, yes.

Q. And at three different prices? A. Well, not at three different prices.

4409 Q. Look at those little circles A. They show two different prices of three different items.

Q. So there are two grades of Rock broilers at two different prices? A. I would conclude so, yes.

Q. That depends on the quality, doesn't it? A. I don't know what it depends on.

Q. You do not know anything about the chicken business? A. Very little.

Q. Well in examining sales slips for a department store you might run across one sales slip for a suit at $25, and another for $22, isn't that

4410 possible? A. That is right.

Q. And another one for $50? A. That is right.

Q. Am I right in saying in determining an average price you would take the one at $50 and the one at $22 and the one at $15 and add them up—— A. If I only had two grades or two classifications I would just add them up and divide them by two.

Q. Suppose you had 6 classifications? A. That would be different.

Q. You would take each classification separately? A. That is right.

Q. And determine the price of each classification? A. That is right.

Q. Do you know what the different prices are there, the different grades of chickens? A. No.

Q. You do not know anything about that? A. No.

Q. You lumped them all together? A. I put them down just as the books showed, the two classifications fowl and broilers only; that is all the books showed.

Q. You mean the sales books? A. Yes.

Q. You didn't look at the charge book? A. I didn't look at these tickets. 4412

Q. Yes, and these tickets tell you exactly what was sold, the kind of poultry, the price and the quantity, do they not? A. Well, I see by this ticket it shows Rock broilers.

Q. You did not compute your statistics from these sales tickets, did you? A. No.

Q. Now I show you Defendants' Exhibit J and ask you to point out what is wrong with that exhibit, find one mistake. A. Find what?

Q. Find anything that is wrong with that exhibit.

Mr. Rice: What exhibit has he got? 4413

The Court: What is Exhibit J, one page or the whole exhibit?

Mr. Heller: The one exhibit, it is all totaled up.

The Court: Look at all the pages of Exhibit J.

The Witness: I have no idea what might be wrong with it.

Q. You have no idea whether it is right or wrong. A. No, sir.

Q. Did you see Leo Schimmel prepare that, were you sitting by him when he was doing that? A. I did not pay any attention to it.

Q. Did you sit with him while he was getting that data from the books? A. I sat there a few minutes, just a few minutes.

Q. You did not check it? A. No, sir.

Q. Would you want to check it and see whether there is anything wrong? A. I would have to.

Mr. Heller: Very well, I wish you would point out exactly what is wrong with that statement.

Mr. Rice: Just a moment, is our wit-
4415 ness being asked to contradict something that has been prepared by their accountant? I do not see what the purpose is.

Mr. Heller: If he can do so I would like him to do it.

Mr. Rice: Are you pushing him through the jumps to see whether he is a good accountant?

Mr. Heller: I am not jumping at all, I am taking it step by step.

Mr. Rice: I do not see the purpose of this, your Honor, I do not see the rele-
4416 vancy.

Q. By merely looking at it can you tell us whether there is anything wrong with that statement? A. I could not.

Q. You couldn't say, whether it was right or wrong? A. I could not.

Q. Am I right you could not——

Mr. Rice: May I see the exhibit?

Q. Do you remembr definitely making the statement yesterday that there was 106,650 pounds reported and you found 151,861, do you remember that? A. Well, I do not remember, whatever it was that was right.

Q. And do you remember saying that you did not take into consideration these accommodation sales when you computed that figure? A. No, I had no idea what were accommodations or what were not accommodation sales because the books do not show.

Q. Taking June 8th, for instance, same date, can you tell us what was paid for this particular merchandise to the commission merchants? A. 25½ cents and 21, apparently.

Q. That was paid to the commission merchants? A. Well, I wouldn't know. 4418

Q. You did not see the purchase records, did you? A. Their purchase records?

Q. Yes. A. Yes, their books.

Q. You saw itemized bills? A. They had no itemized bills.

Q. You saw a total, didn't you? A. I saw the amount purchased from each seller.

Q. Right, and the total value? A. And the total value and in total pounds only.

Q. Among those particular items there might have been several different qualities of merchandise? A. Oh, yes. 4419

Q. Isn't that right? A. Yes, indeed.

Q. And from your examination of those records you could not ascertain whether those consisted of broilers at 18 cents? A. No.

Q. Or leghorn fowl at 8 cents or 6 cents a pound? A. No.

Q. You took the total—— A. The only thing I could do was to arrive at the average cost price.

Q. In other words, when you found a purchase of 10,000 pounds of poultry from a certain commission merchant and alongside of that you

4420 *Clyde N. Justice—By Govt.—Cross*

saw, we will say, $2,000, you divided the 10 into the 2, is that right? A. That is correct.

Q. And you came to the conclusion that the average purchase price for each item to be 20 cents? A. Well, that would be the average price.

Q. As far as you were concerned? A. (No answer.)

Q. Now, among that 10,000 poultry there may have been some leghorns purchased at 8 cents a pound, isn't that right? A. That is correct.

4421 Q. There may have been purchases of the chicken at 20 cents a pound? A. Yes.

Q. There may have been some poultry at 30 cents a pound? A. That is correct.

Q. As far as you were concerned you did not know what that total figure was made of? A. I did not.

Q. Isn't that correct? A. That is right.

Mr. Heller: That is all.

Mr. Rice: No questions.

(Witness excused.)

4422 Mr. Rice: If your Honor please, I wish to offer in evidence a certified copy of the minutes of the meeting on a proposed amendment or series of amendments to the Live Poultry Code, dated August 17, 1934.

The Court: How is that material, Mr. Rice? Anything after the indictment does not make any difference.

Mr. Rice: It is material, if your Honor please, for the purpose of showing that the sale of uninspected poultry affects interstate commerce. We have a ten-page sworn statement here by

Frankel, who was the first witness for the defense. Now we believe that we have laid the foundation for contradicting a certain statement made by Mr. Frankel on direct examination and on cross examination, and we should like to offer in evidence——

The Court: His attention was not called to it, was it?

Mr. Rice: Yes, it was called to it, and we stated at that time we had sent to 4424
Washington for a certified copy of the minutes of this hearing; we did not have the minutes available at that time. His attention was called to it, and I cross examined him thoroughly upon the basis of the information given to me as to what Frankel had testified there. Now I merely wish to offer the transcript of those proceedings in evidence to show what Frankel did testify. We have had a certified copy of these minutes prepared, and it is my understanding that 4425
Mr. Heller will not require the production of the official stenographer to testify that he recorded the statements accurately.

Mr. Heller: The proper way to proceed is to ask Mr. Frankel whether he made such a statement or he did not.

Mr. Rice: And he was asked that.

Mr. Heller: And you are bound by the answer he gave you. I am not responsible for a record made here over a week ago. I know nothing about this.

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Mr. Rice: I submit we are not bound by what Mr. Frankel says, where it is responsive to his testimony on direct examination, particularly where that testimony is a direct issue in the case. Now, the testimony which he gives here is testimony to the effect that the sale of uninspected poultry does affect interstate commerce. He testified that it does not. Now, that is a direct issue in the case, not a collateral issue, and I submit we

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can contradict the witness provided we have laid a proper foundation, and we laid that foundation on cross examination by asking him whether he did not testify to the contrary down at the hearing on the proposed amendments to the Code. He denied that he had so testified. Now we produce the official record of the proceedings to show just what he did testify.

The Court: Is there anything more than his testimony in this?

Mr. Rice: Oh, yes.

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Mr. Heller: The Lord only knows what is in there.

Mr. Rice: I am quite willing——

The Court: There is nothing which could be material but his testimony.

Mr. Heller: Not even his, because the man would have the right to be confronted by the questions.

The Court: I rather think that is so.

Mr. Heller: There might have been an error, there might have been a lot of things. The man is entitled to explain those things. I think Mr. Rice has told you the story, the jury has heard it, it is

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all in now. He has made a speech. It is all in.

The Court: I think the man should have been confronted with the testimony.

Mr. Rice: Of course, we did our very best at that time.

The Court: Nobody is criticizing you, it is not even indirect criticism, but, as a matter of law, he would have to be confronted with his testimony in and of itself, not a paraphrase of it.

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Mr. Rice: My understanding of that rule of evidence, if your Honor please, is that that is not essential where you are contradicting the witness on a material issue.

The Court: I think it is because he has the right to be confronted with it. Mayhap he would deny he ever said such a thing and raise an issue. Somebody might come in and say to me "Didn't you say such and such a thing," generally, and, now, that would not be confronting me because if the testimony was presented I might show very clearly that the understanding that the question had was not the one that I had intended to convey. I do not believe that is so, Mr. Rice.

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Mr. Rice: Your Honor, I do not want to press this point too far, but may I illustrate my point by this: Suppose there had been no transcript of Mr. Frankel's testimony, but supposing that Benjamin Forsmith, we will say, had been in the room when he testified, and

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Mr. Heller: Yes, I renew my motion to dismiss and for a directed verdict on all the grounds stated by me at the end of the Government's case on the whole case, and on the exceptions taken during the trial.

The Court: I am going to grant your motion to dismiss as to Count No. 45, Count No. 47, Count No. 49 and Count 50. I think that is correct, isn't it?

Mr. Heller: That is correct.

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The Court: Counts 45, 47, 49 and 50; and Counts 54, 56, 58 and 59.

I do that on the ground that on the testimony of Mr. Schimmel it is at least open to doubt that the number of hours that he worked on those four counts, or the wages that he was paid on the four other counts, was more as to the hours or less as to the wages than the law provides. That has no reference to the other counts, only those particular counts.

As to all of the other counts, and as to all of the other motions, they are denied, and you have an exception as to the denial of each motion

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as to all counts except those that I have enumerated.

Mr. Rice: If your Honor please, may the jury be advised that those specific counts are the counts as to which Schimmel testified he went away for the week-end?

The Court: That is what I meant to tell them; those are the four counts for illegal hours, and the four counts for illegal wages, and Schimmel testified as to each one of those counts that he had gone away for the week-end on Friday, which, perforce, reduced the number of hours that he worked in each instance. And for that reason I am removing those from the consideration of the jury, those eight counts.

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Mr. Heller: Will your Honor also tell the jury that the fact you deny my motion as to the other counts——

The Court: I had not finished.

Mr. Heller: I beg your pardon.

The Court: I said as to all other counts and as to all other aspects of your motion it is denied and you have an exception to each of my denials. And then I tell the jury my denial of the motion of the defendants indicates no expression of opinion on my part on the facts; it simply means that I think there is a question of fact presented, and that question of fact must be decided by you gentlemen and not by me.

4442

Mr. Rice: If your Honor please, may the record show that there is no Government Exhibit 18?

The Court: Yes, that is correct. Government Exhibit 18 was withdrawn; I think we had that on the record before.

Mr. Rice: Yes, that was supplemented with the Sanitary Code of another date.

The Court: That is correct, Government's Exhibit 18 was an earlier copy of the ordinance, and as Government's Exhibit 17 was the later one that was in effect at the time, Government's Exhibit 18 was withdrawn. That is correct.

4443

(Mr. Heller sums up to the jury, during which the following occurred:)

The Court: You cannot tell the jury about a penalty; that rests on the conscience of the Court. You cannot discuss the penalty for the violation of any section; that rests upon the conscience of the Court.

Mr. Heller: I didn't mean it that way.

4444 The Court: However you mean it, you are trying to tell them what punishment is attached to any one of these offenses; that is not the province of the jury.

Mr. Rice: If your Honor please, in view of what has already been said by counsel, would it be proper for your Honor to instruct the jury now.

The Court: I will instruct them that what has been said as to punishment rests on my conscience, and that can't be discussed by the jury. You do not determine punishment, you determine questions of fact.

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(Mr. Heller continued his summation to the jury, during which the following occurred:)

Mr. Heller: Gentlemen of the Jury, would you like to be put behind the bars for a thing like this?

The Court: Now, about the bars, they do not do that—the sentence rests upon my conscience, not theirs.

(Mr. Heller thereupon concluded his summation to the jury.)

4446 The Court: Gentlemen, we will adjourn until two o'clock. Make it prompt. Gentlemen, do not allow anybody to talk to you about this case. If you hear anybody near you saying anything that might lead up to the case, walk away. Do not look at any of the newspaper articles about the case. Do not discuss the case between yourselves and do not form any opinion until it is finally submitted to you by me in my charge. Come back at two o'clock promptly.

Recess until 2 P. M.

Met pursuant to adjournment at 2 P. M.; present as before.

(Mr. Rice summed up to the jury on behalf of the Government.)

The Court: Now, Gentlemen, do not allow anybody to talk to you about the case. If you hear anybody talking about it, move away, do not listen to it. Do not read anything about it; don't discuss it between yourselves; do not form any opinion until I finally submit it to you with my charge tomorrow. 4448

Be back tomorrow morning at ten-thirty, and then the case will be submitted to you for your consideration.

Adjourned to Wednesday, October 31, 1934, at 10:30 A. M.

Brooklyn, N. Y., October 31, 1934.

Met pursuant to adjournment at 10:30 A. M.; present as before.

Charge to Jury 4449

CAMPBELL, *D.J.*:

Gentlemen of the Jury, I would like to have your attention. I will give you some paper, there will be a large number of counts here and you will have to pass on each count, and I therefore suggest that you keep some record of what each count is, otherwise I do not know how you will be able to arrive at some conclusion. You may make any kind of notation that will be intelligible to you so that you will be able to pass on the various counts. You may arrange

amongst yourselves for the taking of such notes as you may desire.

These defendants are presented before you upon an indictment, thirty three counts of which will be submitted to you.

This indictment is but a charge; it is a method whereby the defendants are placed upon trial. Guilt cannot be found simply because an indictment is presented. Guilt, if found, must be found as the result of proof offered on the trial.

4451 These defendants, as all other defendants, under the wise and humane provisions of our laws, are presumed to be innocent. That presumption is with them right up to the time when you, by your verdict, determine whether the presumption has been rebutted or sustained. And it is the duty of the Government to prove the guilt of each defendant as to each crime charged and each element necessary to constitute that crime beyond a reasonable doubt. Reasonable doubt, Gentlemen, is exactly what its name implies; not some mere whim or preconceived prejudice, not a prejudice against the law, not

4452 a prejudice against the defendants, but a fair doubt on the evidence, a doubt for which you can give a reason satisfactory to your consciences.

The first count is the count of conspiracy. That will be sufficient to identify it. That count in substance is alleged as follows:

> "On April 13, 1934, on application to the President of the United States, by trade associations and groups representing all branches of the Live Poultry Industry of the Metropolitan Area of New York, and after due notice to all persons in said Industry, and after public hearing

on behalf of said Industry, the President, by authority of and in accordance with the provisions of the Act of June 16, 1933 (Public, No. 67, 73rd Congress), commonly known as and hereinafter called the National Industrial Recovery Act, duly approved the Code of Fair Competition for the said Live Poultry Industry, hereinafter called the Code, said approval being made effective as of April 23, 1934."

4454

The provisions of that Code are set forth in an exhibit which has been presented on this trial.

And it is further alleged as follows:

"For many years last past, up to and including the date of the filing of this indictment, a large and important part of the trade and commerce among the several states of the United States has consisted in the shipment of live poultry from, among others, the States of Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia and Wisconsin, and the District of Columbia, to and into the State of New York, which said trade and

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4456 commerce is now hereinbelow described in further detail.

"Approximately 77% of the live poultry consumed in the Metropolitan Area (consisting of the five boroughs of New York City, the counties of Rockland, Westchester, Nassau and Suffolk, in the State of New York, the counties of Hudson and Bergen in the State of New Jersey, and the county of Fairfield in the State of Connecticut), hereinafter called freight

4457 poultry, is shipped by freight over interstate railroads into the State of New York from the states of origin, mentioned in paragraph 2 above, to commission merchants doing business in the State of New York, who sell and deliver said poultry, as agents for and on behalf of the shippers in other states, to wholesale and retail slaughterhouse men in the State of New York. Approximately 50% of the freight poultry arrives at railroad terminals in the State of New Jersey, and

4458 the remainder thereof arrives at railroad terminals in the State of New York. The Commission merchants sell to the slaughterhouse men a large part of said poultry before it arrives at said terminals, and a large part of the remainder thereof immediately after it arrives. Freight poultry which is thus sold is delivered by the commission merchants from the freight cars at said railroad terminals directly to the trucks of the slaughterhouse men and immediately thereafter trucked to the slaughterhouses.

4459

The freight poultry which is not thus sold at said terminals is trucked by the commission merchants from said terminals to their places of business in West Washington Market in the City of New York, where a large portion thereof is promptly transferred from the commission merchants' trucks to the trucks of slaughterhouse men purchasing such poultry, and the rest is unloaded at West Washington Market and thereafter sold to slaughterhouse men as soon as such purchasers can be found. Slaughterhouse men in turn sell such freight poultry to retail poultry dealers and butchers located in the Metropolitan Area in the States of New York, New Jersey and Connecticut, and slaughter said poultry promptly after selling the same.

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"Approximately 23% of the live poultry consumed in the Metropolitan Area, hereinafter called trucked and express poutry, is transported into the Metropolitan Area either by truck or railway express to the said commission merchants, who in turn promptly sell and deliver it to slaughterhouse men, or is transported by truck or express directly to the slaughterhouse men, who in turn sell it to retail poultry dealers and butchers located in the Metropolitan Area. Approximately 84% of such trucked and express poultry is transported into the State of New York from the states of origin mentioned in paragraph 2 above.

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"All such live poultry, including freight poultry and trucked and express poultry, is highly perishable and is sold and delivered usually within 24 hours after arrival in the State of New York, passing through the various channels above described from the point where it comes into the State of New York to the point where it is sold by slaughterhouse men, continuously and without substantial delay other than such as is necessitated by
4463 inspection, unloading, and finding purchasers.

"The uneconomic and destructive practices of the Live Poultry Industry of the Metropolitan Area existing prior to the approval of the said code caused widespread competitive marketing and industrial evils in the Live Poultry Industry and demoralized the entire price structure in the Live Poultry Industry both in the said Metropolitan Area and in substantially all other poultry markets
4464 throughout the United States, thereby, impeding, diverting, and harmfully affecting the interstate commerce in live poultry described in Paragraphs '2', '3', '4' and '5', above, and the interstate commerce in live poultry throughout the United States. The price structure and trade practices of the Live Poultry Industry of the Metropolitan Area govern and control the price structure and trade practices in substantially all other poultry markets throughout the United States. The said Code regulates the interstate commerce described in Paragraphs '2', '3', '4' and '5' hereinabove

and throughout the United States by setting up the standards of fair competition for the Live Poultry Industry of the Metropolitan Area, in accordance with the provisions of said National Industrial Recovery Act.

"Culls and poultry unfit for human consumption hereinafter will be collectively called unfit poultry or unfit chickens; and other poultry will be called healthy poultry or healthy chickens.

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"Throughout the period of time from January 1, 1934, up to and including the date of the filing of this indictment: the A. L. A. Schechter Poultry Corporation has been a corporation duly organized and existing under the laws of the State of New York, and doing business and having an office in the Borough of Brooklyn in the Eastern District of New York; the Schechter Live Poultry Market, Inc. has been a corporation duly organized and existing under the laws of the State of New York and doing business and having an office in the Borough of Brooklyn in the Eastern District of New York; the said A. L. A. Schechter Poultry Corporation and the said Schechter Live Poultry Market, Inc., and Joseph Schechter, Martin Schechter, (alias Meyer Schechter, alias Louis Schechter), Alex Schechter, and Aaron Schechter, (alias Abe Schechter) have been engaged in maintaining, operating, and conducting on their own behalf and on behalf of each other wholesale slaughterhouse business

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4432 while Mr. Frankel is on the stand Benjamin Forsmith tells me that Frankel testified to the contrary?

The Court: That is right, but you could not ask him whether he testified to the contrary. You would have to ask him did he testify as follows, which would be the substance of what Forsmith had told you.

Mr. Rice: Yes, sir.

4433 The Court: Now, you did not ask him that because you did not have it. It wasn't any fault of yours. You asked him generally whether he testified in a certain way. That is not confronting him with the testimony. I do not think you are entitled to do it.

Mr. Rice: I did question him on the basis of the best information I had.

The Court: You did the best you could.

Mr. Rice: Yes.

4434 The Court: But I do not believe that is sufficient. This man is not a defendant. If it were a defendant, it would be entirely different, because then their attitude might be reached, but this man was not. This simply goes to his credibility, and I really think if you are going to do that, you have to confront him, just the same as you had a witness here and asked him whether he testified before the Grand Jury and he read it. That is quite different.

Mr. Heller: Will your Honor instruct the jury to disregard counsel's remarks?

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The Court: The jury will disregard the remarks of counsel, and disregard the comments of the Court, all of it. Whatever counsel says is not evidence. Only that is evidence which I allow here, and when I say anything is stricken out, or when I say I do not allow it, you disregard it and pay no attention to it at all. You pay attention only to that which is allowed.

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Gentlemen of the Jury, do not allow anybody to talk to you about the case, do not discuss it between yourselves, do not form any opinion until it is finally submitted to you. Be back in your seats at ten-thirty tomorrow morning.

Adjourned to October 30, 1934, at 10:30 A. M.

United States of America *vs.* J. Schechter, *et al.*

Brooklyn, N. Y., October 30, 1934.

4437

Met pursuant to adjournment at 10:30 A. M.; present as before.

The Court: Do you have any more testimony?

Mr. Heller: No. The defendants rest and renew their motion to dismiss and for the direction of a verdict of not guilty——

The Court: I guess you do not want to renew your motion until we see if they have any rebuttal.

Mr. Rice: The Government has no rebuttal.

The Court: No rebuttal. Then you make your motion?

4474 to the Code Supervisor any reports concerning the number of hours worked by employees, in violation of Article III, Section 4, of said Code; and

"(g) To knowingly, unlawfully and wilfully pay their employees less than 50¢ per hour, in violation of Article IV, Sections 1 and 2, of said Code; and

"(h) To knowingly, unlawfully and wilfully permit their employees, other
4475 than those engaged in emergency, maintenance or repair work, to work more than 48 hours per week during periods other than Jewish holidays or legal holidays, in violation of Article III, Section 1, of the said Code; and

"(i) To knowingly, unlawfully and wilfully interfere with, hinder, obstruct and prevent the Code Supervisor from performing and carrying out the powers and duties vested in him by said Code, in-
4476 cluding the power and duty to administer said Code, to supervise the performance of the provisions thereof, and to receive and investigate complaints of alleged violations of the provisions thereof, all in violation of Article VI, Section 1, (b-1) and (b-2), of said Code."

The Grand Jurors then allege overt acts, and I wish you would keep those words "overt acts" in your minds. You do not need to write that, just keep it in your minds, beause I will advert to that later.

"And the Grand Jurors aforesaid do further upon their oaths aforesaid present that to effect the objects of said conspiracy and in furtherance thereof, said defendants committed the following overt acts:

"(a) On or about June 25, 1934, at the said wholesale slaughterhouse at 858 East 52nd Street, Brooklyn, New York, the aforesaid Aaron Schechter, Martin Schechter and the A. L. A. Schechter 4478
Poultry Corporation, knowingly, wilfully and unlawfully sold for human consumption an unfit chicken to Harry Stauber or some other person to the Grand Jurors unknown, operating a butcher shop at 1753 Prospect Place, Brooklyn, New York.

"(b) On or about June 27, 1934, at the said wholesale slaughterhouse at 858 East 52nd Street, Brooklyn, New York, the aforesaid Martin Schechter and the A. L. A. Schechter Poultry Corporation 4479
sold for human consumption two unfit chickens to a retail poultry dealer by the name of Wagshul (his exact name being to the Grand Jurors unknown), maintaining a place of business at 127 Sutter Avenue, Brooklyn, New York.

"(c) On or about June 28, 1934, the said defendants did have in their possession at 858 East 52nd Street, Brooklyn, New York, with the intent and purpose of selling the same for human consumption, four unfit chickens.

4480 "(d) On or about June 28, 1934, said defendants did have in their possession at the said wholesale slaughterhouse at 991 Rockaway Avenue, Brooklyn, New York, with the purpose and intent of selling the same for human consumption, six unfit chickens."

This is all part of the first count.

"(e) On or about May 26, 1934, said
4481 defendants transported from Philadelphia, Pennsylvania, into the State of New York to the said wholesale slaughterhouse at 858 East 52nd Street, Brooklyn, New York, and there unloaded and placed in the said premises with the purpose and intent of selling the same within the City of New York, approximately 5,200 pounds of live poultry which they had failed and neglected to have inspected or approved in accordance with any rule, regulation or ordinance of the said City of New York.

4482 "(f) On or about May 28, 1934, said defendants transported from Philadelphia, Pennsylvania, into the State of New York to the said wholesale slaughterhouse at 858 East 52nd Street, Brooklyn, New York, and there unloaded and placed in the said premises with the purpose and intent of selling the same within the said City of New York, approximately 7,144 pounds and 59 baskets (each said basket containing approximately 60 to 65 pounds) of live poultry which they had failed and neglected to have inspected

or approved in accordance with any rule, regulation or ordinance of the said City of New York.

"(g) During or about the week commencing May 26, 1934, the defendants sold in Brooklyn, New York, to persons to the Grand Jurors unknown, the aforesaid quantity of approximately 12,344 pounds (the aforesaid 5,200-pound lot plus the aforesaid 7,144-pound lot) of said uninspected live poultry described in paragraphs (e) and (f) hereinabove, or a substantial part thereof, without having the same inspected in accordance with any rule, regulation or ordinance of the City of New York.

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"(h) On or about May 29, 1934, at said wholesale slaughterhouse at 858 East 52nd Street, Brooklyn, New York, said defendants sold the said 59 baskets of uninspected live poultry referred to in paragraph (f) hereinabove, to the Mogen David Live Poultry Market, Inc., and/or to David Schechter at 539 Snediker Avenue, Brooklyn, New York, without having the same inspected or approved in accordance with any rule, regulation or ordinance of the said City of New York.

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"(i) On or about June 20, 1934, at the said slaughterhouse at 858 East 52nd Street, Brooklyn, New York, said defendants premitted, and participated in, individual selections of particular chickens taken from particular coops and half coops in a sale of live poultry to a retail poultry dealer by the name of Wagshul

(his full name being to the Grand Jurors unknown), maintaining places of business in Brooklyn, New York, and permitted said Wagshul to reject individual healthy chickens and to slaughter the chickens so selected."

These are all Count 1. There will be many other counts besides, but this is Count 1, I am reading.

4487 "(j) On or about June 22, 1934, at the said slaughterhouse at 858 East 52nd Street, Brooklyn, New York, said defendants permitted, and participated in, individual selections of particular chickens taken from particular coops and half coops in a sale of live poultry to a retail poultry dealer (his name being to the Grand Jurors unknown), maintaining a place of business at 961 Blake Avenue, Brooklyn, New York, and permitted said retail poultry dealer to reject individual healthy chickens and to slaughter the

4488 chickens so selected.

"(k) On or about June 28, 1934, at the said slaughterhouse at 858 East 52nd Street, Brooklyn, New York, said defendants permitted, and participated in, individual selections of particular chickens taken from particular coops and half coops in a sale of live poultry to a butcher by the name of Sam Tanowitz, maintaining a place of business of 5303 Church Avenue, Brooklyn, New York, and permitted said Sam Tanowitz to reject individual healthy chickens and to slaughter the chickens so selected.

"(l) On or about June 28, 1934, at the said slaughterhouse at 991 Rockaway Avenue, Brooklyn, New York, said defendants permitted, and participated in, individual selections of particular chickens taken from particular coops and half coops in a sale of live poultry to a retail poultry dealer by the name of Jack Kleinman, maintaining a place of business at 1507 Kings Highway, Brooklyn, New York, and permitted said Jack Kleinman to reject individual healthy chickens and to slaughter the chickens so selected. 4490

"(m) On or about June 25, 1934, at the said slaughterhouse at 991 Rockaway Avenue, Brooklyn, New York, said defendants permitted, and participated in, individual selections of particular chickens taken from particular coops and half coops in a sale of live poultry to a butcher by the name of Morris Rabinowitz, maintaining a place of business at 508 New Lots Avenue, Brooklyn, New York, and permitted said Morris Rabinowitz to reject individual healthy chickens and to slaughter the chickens so selected. 4491

"(n) On or about June 27, 1934, at or near 858 East 52nd Street, Brooklyn, New York, the aforesaid Martin Schechter did use threatening, coercive and intimidating language and gestures to one Philip Alampi, an investigator employed by and acting on behalf of the Code

4492 Supervisor and engaged in investigating violations herein described and other violations of said Code by said defendants, with the purpose, intent and effect of preventing said Alampi from performing his duties above set forth, and of enabling said defendants to commit the violations herein described and other violations of said Code.

"(o) On or about June 28, 1934, at
4493 or near 858 East 52nd Street, Brooklyn, New York, the aforesaid Aaron Schechter, Alex Schechter and Martin Schechter did use vile, threatening, coercive and intimidating language and gestures to one Philip Alampi, an investigator employed by and acting on behalf of the Code Supervisor and engaged in investigating violations herein described and other violations of said Code by said defendants, with the purpose, intent and effect of preventing said Alampi from performing his duties above set forth, and of
4494 enabling said defendants to commit the violations herein described and other violations of said Code.

"(p) On or about June 29, 1934, at or near 858 East 52nd Street, Brooklyn, New York, the aforesaid Aaron Schechter, Alex Schechter, and Martin Schechter did use vile, threatening, coercive and intimidating language and gestures to one Benjamin Forsmith, an investigator employed by and acting on behalf of the Code Supervisor and engaged in investigating violations herein described and

other violations of said Code by said defendants, with the purpose, intent and effect of preventing said Forsmith from performing his duties above set forth, and of enabling said defendants to commit the violations herein described and other violations of said Code.

"(q) On or about July 3, 1934, at or near 991 Rockaway Avenue, Brooklyn, New York, the aforesaid Joseph Schechter did use threatening, coercive and intimidating language and gestures to one Jack Musicant, an investigator employed by and acting on behalf of the Code Supervisor and engaged in investigating violations herein described and other violations of said Code by said defendants, with the purpose, intent and effect of preventing said Musicant from performing his duties above set forth, and of enabling said defendants to commit the violations herein described and other violations of said Code. 4496 4497

"(r) On or about June 28, 1934, the aforesaid A. L. A. Schechter Poultry Corporation and Martin Schechter did submit to the Code Supervisor weekly reports for each week from the week ending April 30, 1934, to and including the week ending June 11, 1934, which reports contained false and fictitious statements relating to the range of daily prices and volume of sales for each kind, grade and quality of poultry sold by said defendants during the period covered by each of said reports.

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"(s) Each and every week after the week ending May 18, 1934, to and including the date of the filing of this indictment, the aforesaid A. L. A. Schechter Poultry Corporation, Alex Schechter, Martin Schechter and Aaron Schechter did pay to a person employed by them in the said wholesale slaughterhouse at 858 East 52nd Street, Brooklyn, New York (the name of said person being to the Grand Jurors unknown), wages amounting to less than 50¢ per hour for each hour worked by the said employee.

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"(t) Each and every week after the week ending May 18, 1934, to and including the date of the filing of this indictment, the aforesaid A. L. A. Schechter Poultry Corporation, Alex Schechter, Martin Schechter and Aaron Schechter did cause and permit a person employed at the said wholesale slaughterhouse at 858 East 52nd Street, Brooklyn, New York (the name of said person being to the Grand Jurors unknown), to work at the said slaughterhouse in excess of 55 hours per week, the said employee not being engaged in emergency, maintenance or repair work, and the said violations occurring during periods other than Jewish holidays or legal holidays."

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The Grand Jurors further allege:

"All of the live poultry purchased and sold by said defendants is transported into the State of New York from other

States. Said defendants purchase a substantial portion of said live poultry at the said railroad terminals in New York and New Jersey immediately after its arrival at said terminals from States other than the States of New York and New Jersey, and truck said poultry directly from said terminals to their wholesale slaughterhouses in Brooklyn, New York, where they sell it to retail poultry dealers and butchers usually within 24 hours after said poultry has arrived at said terminals. Said defendants also purchase a substantial portion of said poultry in Philadelphia, Pennsylvania, and truck it directly therefrom to their wholesale slaughterhouses in Brooklyn, New York, where they sell it to retail poultry dealers and butchers usually within 24 hours after it is thus brought into the State of New York. All of the live poultry referred to in the overt acts described in sub-paragraphs (e), (f), (g), and (h) of paragraph 10 hereinabove was thus trucked from Philadelphia, Pennsylvania, to Brooklyn, New York, and sold in interstate commerce at the wholesale slaughterhouses of said defendants in Brooklyn, New York, to retail poultry dealers and butchers.

"The violations and the transactions referred to in sub-paragraphs (e), (f), (g), and (h) of paragraph 9 hereinabove are in the interstate commerce in live poultry described in paragraphs 2, 3, 4, and 5 hereinabove; and all of the violations and transactions referred to in

at 991 Rockaway Avenue, Brooklyn, N. Y. and at 858 E. 52nd Street, Brooklyn, N. Y."

It is further alleged:

"Joseph Schechter, Martin Schechter, Alex Schechter, Aaron Schechter, the A. L. A. Schechter Poultry Corporation, and Schechter Live Poultry Market, Inc., hereinafter collectively called said defendants, are hereby made defendants in the
4469 First Count of this indictment. Said defendants, together with other persons to the Grand Jurors unknown, well knowing all matters of fact in this indictment set forth, beginning on or about May 16, 1934, and continuously thereafter up to and including the date of filing this indictment, within the Eastern District of New York, did unlawfully, feloniously, and wilfully conspire with each other to commit a large number of offenses
4470 against the United States, to wit, to violate the said National Industrial Recovery Act and the said Code; that is to say, they combined, agreed, confederated, and conspired with each other:

"(a) To knowingly, unlawfully and wilfully sell for human consumption unfit poultry, in violation of Article VII, Section 2, of said Code; and

"(b) To knowingly, unlawfully and wilfully sell poultry which had not been inspected or approved in accordance with any rule, regulation or ordinance of the

area where said poultry was sold, in violation of Article VII, Section 22, of said Code; and

"(c) To knowingly, unlawfully and wilfully use, in the wholesale slaughtering of poultry, methods of slaughtering other than 'straight killing' or killing on the basis of official grade, and to knowingly, unlawfully and wilfully allow persons purchasing poultry for resale to make selections of individual chickens 4472
where such selections are made for purposes other than the elimination of culls and unfit chickens, all in violation of Article VII, Section 14, of said Code; and

"(d) To knowingly, unlawfully, and wilfully commit and threaten to commit acts of violence, coercion and intimidation, in violation of Article VII, Section 21 (1), of said Code; and

"(e) To knowingly, unlawfully and wilfully submit to the Code Supervisor 4473
false and fictitious reports relating to the range of daily prices and volume of sales for various kinds, grades and qualities of poultry sold by them during the week prior to said reports, and to knowingly, unlawfully and wilfully fail, refuse and decline to submit to the Code Supervisor proper reports concerning the same, both in violation of Article VIII, Section 3, of said Code; and

"(f) To knowingly, unlawfully and wilfully fail, refuse and decline to furnish

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in the Metropolitan Area, and to reduce the volume of live poultry shipped into the State of New York from other states.

"(f) The diseases which contaminate unfit poultry are in many instances transferable to healthy poultry, and the shipment in interstate commerce of such unfit poultry in the same crates and in the same cars with healthy poultry tends to taint, damage and infect the healthy poultry moving in interstate commerce and render the same inedible and unfit for human consumption.

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"(g) The purpose of inspecting poultry prior to the sale thereof in the City of New York is to eliminate unfit poultry and to detect and prevent various frauds whereby the true weight of poultry is misrepresented in the interstate transportation and delivery of live poultry from shippers outside the State of New York directly to commission men and slaughterhouse men within the State of New York.

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"(h) The sale of uninspected poultry aids the commission of the aforesaid frauds and causes an increase in the transportation of unfit poultry into New York from other states and a decrease in the transportation of healthy chickens into the State of New York from other States.

"(i) The purpose of Article VII, Section 14 of said Code, requiring 'straight killing' or killing on the basis of official grade, is to encourage and promote the practice of grading poultry according to

quality, and packing, shipping and selling such poultry on the basis of official grade, and to prevent the evil competitive practices and demoralized and uneconomic price structure resulting from the sale at reduced prices of healthy poultry rejected in the course of selective killing. The use in the wholesale slaughtering of poultry of any method of slaughtering other than 'straight killing' and the practice of permitting purchasers to make selections of individual chickens from particular coops or half coops tends to defeat these purposes and to cause the shipment and delivery to commission merchants and slaughterhouse men in New York by shippers in other states of ungraded and inferior poultry and to diminish the price obtainable by such shippers for poultry of higher quality, and to demoralize the entire price structure. 4514

"(j) The payment by said defendants of wages at a rate less than 50¢ per hour to employees working in the transactions relating to the purchase, handling and sale of poultry described in paragraph 11 hereinabove, as prohibited by Article IV, Section 1 and 2 of said Code, and permitting such employees to work more than 48 hours per week, as prohibited by Article III, Section 1 of said Code, enables said defendants to obtain unfair advantages over other slaughterhouse men and thereby encourages and causes other slaughterhouse men to engage in the same and all other practices prohibited 4515

by said Code, including those referred to in sub-paragraphs (a) to (i) of paragraph 9 hereinabove, and thereby obstructs and prevents the accomplishment of the purposes of said Code, diverts substantial interstate shipments of live poultry, and causes a disruption of the normal flow of the interstate commerce in live poultry coming into the State of New York from other states.

4317 "(k) The commission by said defendants of acts of violence, coercion and intimidation as prohibited by Article VII, Section 21 (1) of said Code, their submission to the Code Supervisor of false and fictitious reports, and their failure to submit reports, both in violation of Article III, Section 4 and Article VIII, Section 3 of said Code, and their interference with and obstruction of the Code Supervisor in accomplishing the powers and duties vested in him by said Code, in

4318 violation of Article VI, Section 1 (b-1 and B-2) of said Code, obstructs and prevents the accomplishment of the purposes of said Code, encourages and causes all of the practices prohibited by said Code, including those referred to in sub-paragraphs (a) to (j) inclusive of this paragraph, and thereby directly causes a disruption in the free and orderly flow of interstate commerce in live poultry coming into the State of New York from other states."

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That is the first count. That is what the Government in the first count charges. The conspiracy here charged is to commit offenses against the United States. To violate the act here in question is made a crime by the National Industrial Recovery Act. Therefore, an offense against the United States, for the violations which it is charged the defendants combined, agreed and confederated and conspired with each other to commit, would affect interstate commerce. Unless such offenses affects interstate commerce, this court would not have jurisdiction; but if they do so affect interstate commerce, this court has jurisdiction.

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In this count we are not dealing with what are called substantive offenses. The crime charged in this count is not the crime of doing these several acts in violation of the Code. The crime charged here is the confederating, the agreeing, the combining together to do the acts alleged, in violation of the Code. The gravamen of the offense here charged is the meeting of the minds of the defendants, the conspiring, the confederating and the agreeing together of them on a preconcerted plan, which has an object, which has a method of accomplishment, and as to which the defendants have the means of accomplishing the same, if they have entered into any such agreement.

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If they have committed any of the offenses alleged here, and those offenses have simply been evidenced as dissociated acts, without any agreement or understanding on their part in advance that they would do these things, why, of course, that would not be conspiracy.

In order to arrive at this conspiracy it was not necessary for them to sit around the table and

4522 adopt resolutions. No formal act of that kind was required. The meeting of the minds could occur as the result of a conference, the meeting of the minds could occur as the result of the plan which they perfected; and their acts can be and must be considered in determining whether or not there was any agreement, whether or not there was any confederation, whether or not there was any conspiracy on their part.

4523 In order to be guilty of a conspiracy they do not all have to enter into it at the same time provided they enter into it before the overt acts are committed. They may come in at different times, but they must always come in. If they do come in, into the carrying out of the same plan, they do not all have to play the same part. Some may do certain classes of acts, some may do other classes of acts, but all the classes of acts performed must be related to the common plan, to a plan which they have conceived and which they have agreed amongst themselves to put in practice.

4524 Even if all this agreement is had, there still would be no crime of conspiracy unless it was vitalized by an overt act. That is why I called your attention to the words "overt act." Then I read to you what the Government has alleged as overt acts. Of course, anybody may agree with another that they are going to do things, and they are wrong things to do, and they are violations of law, but if they do not do anything in pursuance of that, there is no crime. They did not all have to commit the overt act. If the conspiracy was entered into, if their minds met, if there was a common agreement on this plan, on the method of operation, then the act of any one

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conspirator, any one overt act they are alleged to have committed, would vitalize the conspiracy. Furthermore, as you undoubtedly heard during the trial, there was testimony given of acts by different defendants. Unless there was a conspiracy, anything that was said, or anything that was done, by any one of the defendants, would bind only him, and the others could not be bound by what he said or what he did. Each one would have to stand for himself. But if a conspiracy has been entered into, and you so find, then the act of any one, or the statement of any one, of the conspirators at any time during the life of the conspiracy would bind all the others.

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That is plain? Do you understand what I mean?

You understand here that there has been much which has been enumerated, as the Government has charged. The Government has called witnesses, you have heard those witnesses testify, and those witnesses testified that the things here enumerated affected interstate commerce; that class of acts had its effect and did effect interstate commerce. Some of those men were economists. One of them in particular claimed to be an experienced man in addition to his qualifications as an economist. They testified at length. I am not going to recite to you any testimony unless it is necessary to make clear my ruling on any particular question. The facts have been discussed by both counsel fully and ably. You have heard them all. There is no necessity of my going over them.

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Because I may refer to any fact in the case does not mean it is any more important than any others; the fact that I may have failed to

4528 refer to any facts in the case does not mean that they are any less important than another. You are to consider all the facts. As I have stated, any facts that I refer to at all will be simply as I may find necessary to state in order to make clear my rulings on the questions of law.

Opposed to the Government's evidence was the evidence of the men called by the defendants, all of whom said that their experience was practical experience. Has the Government sus-
4529 tained its contention? Do these several acts that have here been recited affect interstate commerce? It is for you to say.

Of course, it is not the size of the act that is controlling, because the offense may be large or the offense may be small. The question is whether the acts affect interstate commerce in a large way or in a small way. I will advert to that later on when I come to the counts of the substantive crime.

Do these acts that are here alleged affect interstate commerce? You have all the evidence.
4530 You can determine for yourselves whether these acts, if done, would affect interstate commerce in the poultry trade. If so, then you must come to the consideration of whether there has been a conspiracy as I have described it to you.

If there was such a conspiracy entered into by these men it must have been done knowingly, unlawfully and feloniously. That thing is knowingly done when you know the nature and the consequence of the act which you are performing; that thing is unlawful which the law says you shall not do; that thing is felonious which is in disobedience of law in a substantial way, tending to felonious action.

Did they enter into any common purpose, all of them, or some of them? There must be at least two to conspire because one man cannot conspire with himself. Did any two or more of them enter into any such conspiracy as is described here, and were the things which they conspired to do things which would affect interstate commerce if they did enter into a conspiracy? And, if that is so, did any one or more of them, in pursuance of that conspiracy and for the purpose of effecting the object of the same, commit any one of the overt acts which are alleged in 4532
this indictment? They did not have to commit them all. Any one would be sufficient to vitalize a conspiracy. That is understood, is it, gentlemen? You understand this distinction? Because I am going on now to the substantive crime.

Substantive crimes have to do with the commission of the particular offense in and of itself. Conspiracy does not; conspiracy has to do with an agreement, a confederation, a meeting of the minds to do and commit offenses, and it is not necessary that they be successful in their conspiracy. It is sufficient, if such a conspiracy 4533
be entered into, that they commit some one of the overt acts alleged to vitalize the same.

We will now come to the overt acts, and you may keep a note, you may make a slight memorandum, so you can distinguish them. I am now, of course, as before, reading to you what the Government charges. You realize, of course, that what I have read and am about to read is not evidence. You understand that, do you, gentlemen? That is their charge. Does the evidence they offer sustain that charge? The burden, of course, is on the Government to sustain

it beyond a reasonable doubt. The defendants offered their evidence. It is only on all the evidence that you can say whether the count was sustained. These overt acts which we now come to have to do with the particular acts charged. These have nothing to do in themselves with any conspiracy. It is the doing of the act itself with reference to these counts that is to be considered.

In addition to allegations as to approval of the Code, the effect of violations on interstate commerce, and the effect of the alleged violation of
4535 the act or acts alleged in each count, the following counts in substance charge as follows:

Count 2nd. On or about June 25, 1934, at 858 East 52nd Street, Brooklyn, New York, the defendants Aaron Schechter, Martin Schechter and the A. L. A. Schechter Poultry Corporation, knowingly, wilfully and unlawfully sold for human consumption an unfit chicken to Harry Strauber, or to some other person to the Grand Jurors unknown, operating a butcher shop at 1753 Prospect Place, Brooklyn, New York, in
4536 violation of Article VII, Section 2, of the said Code.

Reading these substantive counts, there may be, as you will observe, a duplication in the section of the overt acts that were charged under the first count, that of conspiracy. They are separate and distinct, because in the first count, as I instructed you, it was the conspiracy itself, and the recital of the overt acts was only for the purpose of vitalizing the conspiracy; whereas here, each of these substantive crimes that I will describe to you that is charged in the indictment is separate and distinct, of and by itself, and it is possible that the defendants may not be guilty

on any of the counts; it is possible that the defendants may be guilty on some counts and not on others, and it is possible, of course, that the defendants may be guilty on all the counts. The fact that there is a charge of conspiracy and that one of the overt acts charged thereafter is charged as a substantive crime does not prevent guilt on both conspiracy and the substantive crime if the evidence warrants it.

The Code provisions relating to Count 2, that you are taking a note of, I assume, are as follows: 4538

Article VII of said Code provides: "The following practices shall be deemed to be and shall constitute unfair methods of competition on the part of members of the industry and are hereby prohibited.

Sec. 2. "Inedible products.—Knowingly to purchase or sell for human consumption culls or other product that is unfit for human consumption."

Article II, Section 16, defines culls as follows: "The term 'culls' means poultry which is unfit for human consumption as defined in the instructions of the Chief of the Bureau of Agricultural Economics governing the inspection of live poultry, at New York." 4539

Count 3rd. On or about June 27, 1934, at 858 East 52nd Street, Brooklyn, New York, the defendants Martin Schechter, and A. L. A. Schechter Poultry Corporation, knowingly, wilfully and unlawfully sold for human consumption two unfit chickens to a retail poultry dealer by the name of Wagshul (his full name being to the Grand Jurors unknown) maintaining a place of business at 127 Sutter Avenue, Brooklyn, New York,

4504 paragraph 9 hereinabove, which the said defendants conspired to commit and engage in, affect said interstate commerce in the following manner, that is to say:

"(a) Prior to the adoption of said Code widespread competitive, marketing and industrial evils existed in the Live Poultry Industry of the Metropolitan Area. The existence of such evils obstructed the free interstate flow of live
4505 poultry into the State of New York from other states, substantially diminished the total volume and value thereof, disrupted the orderly flow thereof, and contaminated and demoralized the character thereof. Said Code prohibits such evils and was adopted and approved for the purpose of correcting said evils.

"(b) The conspiracy to commit the offenses described herein has encouraged and caused the violations hereinabove described and other violations of essential
4506 provisions of said Code by a large number of other members of the Live Poultry Industry in the Metropolitan Area, and has thereby diverted substantial interstate shipments of live poultry and has caused a disruption of the normal flow of the interstate commerce in live poultry coming into the State of New York from other states, and has thereby obstructed and prevented the accomplishment of said purposes of said Code.

"(c) The defendants' sale for human consumption of unfit poultry causes the

transportation in interstate commerce of unfit poultry, which poultry would otherwise be destroyed prior to said interstate transportation, and diminishes the interstate transportation of healthy and edible poultry.

"(d) The defendants' sale for human consumption of unfit poultry encourages and causes the sale for human consumption of unfit poultry by other slaughterhouse men in said Metropolitan Area, 4508
and thereby causes the transportation in interstate commerce of substantial amounts of unfit poultry which would otherwise be destroyed prior to such interstate transportation, and diminishes the interstate transportation of healthy and edible poultry.

"(e) Unfit poultry is sold at prices substantially lower than the prevailing market prices for healthy poultry, and in many instances unfit poultry is sold under misrepresentations as to its edibility. 4509
Such misrepresentations and such sales at prices under prevailing market prices as aforesaid tend to demoralize the market value of healthy poultry, to cause confusion in the orderly marketing of live poultry through the channels of interstate commerce described in paragraphs 2, 3, 4, and 5 of this indictment, to reduce substantially the prices paid to the persons shipping poultry into the State of New York from other states, to diminish the consumption of live poultry

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Sec. 14. "Straight killing.—The use in the wholesale slaughtering of poultry, of any method of slaughtering other than 'straight killing' or killing on the basis of official grade. Purchasers may, however, make selection of a half coop, coop, or coops, but shall not have the right to make any selection of particular birds."

Article II, Section 15, defines straight killing as follows:

Sec. 15. "The term 'straight killing' means the practice of requiring persons purchasing

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poultry for resale to accept the run of any half coop, coop, or coops, as purchased by the slaughter house operators, except for culls."

Section 16 of that Article defines culls as follows: "The term 'culls' means poultry unfit for human consumption as defined in the instructions of the Chief of the Bureau of Agricultural Economics governing the inspection of live poultry at New York."

Let me say to you in passing, so you will not be at all disturbed, you may find skips, as you do there, from the fifth count to the twenty-

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fourth count. Later on you will find some counts that are omitted. Those counts are out; they are not before you for consideration. The only counts before you for consideration are those on which I am instructing you. So you won't be confused, you went to the fifth and then skipped to the twenty-fourth. The intervening counts are not before you for consideration.

The next count is the 25th: On or about June 22, 1934, at the said slaughter house at 858 East 52nd Street, Brooklyn, New York, the defendants Aaron Schechter, Martin Schechter, Alex Schechter, and the A. L. A. Schechter Poultry Corporation permitted and participated in selections

of individual chickens taken from particular coops and half coops in the sale of live poultry by them to a retail poultry dealer (his name being to the Grand Jurors unknown), maintaining a place of business at 961 Blake Avenue, Brooklyn, New York, and permitted said retail poultry dealer to reject individual healthy chickens in violation of said Article VII, Section 14, of said Code, which I have read to you.

Count 26th: On or about June 28, 1934, at the said slaughter house at 858 East 52nd Street, 4550
Brooklyn, New York, the defendants Martin Schechter, Aaron Schechter, and the A. L. A. Schechter Poultry Corporation, permitted and participated in, selections of individual chickens taken from particular coops and half coops in the sale of live poultry by them to a butcher by the name of Sam Tanowitz, maintaining a place of business at 5303 Church Avenue Brooklyn, New York, and permitted said Tanowitz to reject individual healthy chickens, in violation of said Article VII, Section 14 of said Code, which I have read to you. 4551

Count 27th: On or about June 28, 1934, at the said slaughter house at 991 Rockaway Avenue, Brooklyn, New York, the defendants Joseph Schechter and Schechter Live Poultry Market, Inc. permitted and participated in, selections of individual chickens taken from particular coops and half coops in the sale of live poultry by them to a retail poultry dealer by the name of Jack Kleinman, maintaining a place of business at 1507 Kings Highway, Brooklyn, New York, and permitted said Jack Kleinman to reject individual healthy chickens,

4552 in violation of said Article VII, Section 14, of said Code, which I have read to you.

Count 28th: On or about June 25, 1934, at the said slaughter house at 991 Rockaway Avenue, Brooklyn, New York, the defendants Joseph Schechter and Schechter Live Poultry Market, Inc., permitted and participated in, selections of individual chickens taken from particular coops and half coops, in the sale of live poultry by them to a butcher by the name
4553 of Morris Rabinowitz, maintaining a place of business at 508 New Lots Avenue, Brooklyn, New York, and permitted said Rabinowitz to reject individual healthy chickens, in violation of said Article VII, Section 15, of said Code, which I have read to you.

Count 29th: On or about June 21, 1934, at the said slaughter house at 858 East 52nd Street, Brooklyn, New York, the defendants Martin Schechter, Aaron Schechter, and A. L. A. Schechter Poultry Corporation permitted and par-
4554 ticipated in selections of individual chickens taken from particular coops and half coops, in the sale of live poultry by them to a butcher (whose name is to the Grand Jurors unknown), maintaining a place of business at 304 Troy Avenue, Brooklyn, New York, and permitted said butcher to reject individual healthy chickens, in violation of said Article VII, Section 14, of said Code.

Count 30th: On or about June 21, 1934, at the said slaughter house at 858 East 52nd Street, Brooklyn, New York, the defendants Martin Schechter, Aaron Schechter, and A. L. A. Schech-

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ter Poultry Corporation permitted and participated in selections of individual chickens taken from particular coops and half coops, in the sale of live poultry by them to a butcher by the name of Tanowitz—that is another Tanowitz count—maintaining a place of business at 5303 Church Avenue, Brooklyn, New York, and permitted said Tanowitz to reject individual healthy chickens, in violation of said Article VII, Section 14, of said Code.

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Count 31st: On or about June 26, 1934, at the said slaughter house at 858 East 52nd Street, Brooklyn, New York, the defendants Martin Schechter, Aaron Schechter, Alex Schechter and A. L. A. Schechter Poultry Corporation, permitted and participated in selections of individual chickens taken from particular coops and half coops, in the sale of live poultry by them to a butcher by the name of Sam Tanowitz—another one—maintaining a place of business at 5303 Church Avenue, Brooklyn, New York, and permitted said Tanowitz to reject individual healthy chickens, in violation of said Article VII, Section 14, of the said Code, which I have read to you.

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Count 32nd: On or about June 26, 1934, at the said slaughter house at 858 East 52nd Street, Brooklyn, New York, the defendants Martin Schechter, Aaron Schechter, Alex Schechter and the A. L. A. Schechter Poultry Corporation, permitted and participated in selections of individual chickens taken from particular coops and half coops, in the sale of live poultry by them to butchers by the name of Sol Levine and Sam Schechter, maintaining places of business at 257 and 509 Brighton Beach Avenue,

Brooklyn, New York, and permitted said Sol Levine and Sam Schechter to reject individual healthy chickens, in violation of said Article VII, Section 14, of said Code, which I have read to you.

Count 33rd: On or about June 27, 1934, at the said slaughter house at 858 East 52nd Street, Brooklyn, New York, the defendants Martin Schechter, Aaron Schechter, Alex Schechter and A. L. A. Schechter Poultry Corporation, per-
4359 mitted and participated in selections of individual chickens taken from particular coops and half coops, in the sale of live poultry by them to butchers by the name of Sol Levine and Sam Schechter—that is another count—maintaining places of business at 257 and 509 Brighton Beach Avenue, Brooklyn, New York, and permitted said Sol Levine and Sam Schechter to reject individual healthy chickens, in violation of said Article VII, Section 14, of the said Code, which I have read to you.

4360 Count 34th: On or about June 27, 1934, at or near 858 East 52nd Street, Brooklyn, New York, the defendant Martin Schechter, in violation of Article VII, Section 21 (1) of the said Code, did use threatening, coercive and intimidating language and gestures to one Philip Alampi, an investigator employed by and acting on behalf of the Code Supervisor, and engaged in investigating violations by the defendants herein and members of the Live Poultry Industry of Article III, Sections 1 and 4, Article IV, Sections 1 and 2, Article VI, Sections 1 (b-1) and (b-2), Article VII, Sections 2, 14, 15 and 22, and Article VIII, Section 3 of said Code,

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with purpose and intent and effect of preventing said Alampi from performing his duties above set forth, and to enable Alex Schechter, Aaron Schechter, the A. L. A. Schechter Poultry Corporation, and said defendant Martin Schechter to commit said violations and other violations of said Code.

Article VII of the said Code provides: "The following practices shall be decreed to be and shall constitute unfair methods of competition on the part of the members of the industry, and are hereby prohibited."

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Sec. 21. "Anti-Racketeering.—The following practices and acts shall be considered violations of this Code. (1) Any act of violence, coercion, extortion, or intimidation, or any threat, conspiracy, combination, or concerted action to commit any act of violence, coercion, extortion or intimidation."

Article II, Section 2, defines "member of the industry" as follows:

Sec. 2. "The term 'member of the industry' includes without limitation any individual, partnership, association, corporation, or other form of enterprise engaged in the industry, either as employer or on his or its own behalf."

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The violations referred to by article and section numbers of the Code which it is alleged Alampi was investigating, related to hours of employment of employees, wages paid to employees, the various provisions of the Code hereinbefore defined as to sale of unfit poultry, sale of uninspected poultry, and straight killing.

Count 35th: On or about June 28, 1934, at or near 858 East 52nd Street, Brooklyn, New York,

4564 the defendants Aaron Schechter, Alex Schechter, and Martin Schechter, in violation of Article VII, Section 21 (1) of said Code, did use vile, threatening, coercive and intimidating language and gestures to one Philip Alampi—you see, there are two involving Philip Alampi, two succeeding days—an investigator employed by and on behalf of the Code Supervisor and engaged in investigating violations by the defendants herein of Article III, Sections 1 and 4, Article IV, Sections 1 and 2, Article VI, Sections 1 (b-1) and (b-2), Article VII, Sections 2, 14, 15 and 22, and Article VIII, Section 3 of said Code, with the purpose, intent and effect of preventing said Alampi from performing his duties above set forth, and to enable the defendants herein to commit said violations and other violations of said Code.

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I have read to you the Code provisions that relate to it.

Count 36th: On or about June 28, 1934, at or near 858 East 52nd Street, Brooklyn, New York, the defendants Aaron Schechter, Alex Schechter, and Martin Schechter, in violation of Article VII, Section 21 (1) of said Code, did use vile, threatening, coercive and intimidating language and gestures to one Benjamin Forsmith, an investigator employed by and on behalf of the Code Supervisor, and engaged in investigating violations of Article III, Sections 1 and 4, Article IV, Sections 1 and 2, Article VI, Sections 1 (b-1) and (b-2), Article VII, Sections 2, 14, 15 and 22, and Article VIII, Section 3, of the said Code, with the purpose, intent and effect of preventing said Forsmith from performing his duties above set forth, and to enable the defend-

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ants herein to commit said violations of said Code, and I have read to you the Code provisions.

Count 37th: On or about July 3, 1934, at or near 991 Rockaway Avenue, Brooklyn, New York, the defendant Joseph Schechter, in violation of Article VII, Section 21 (1) of said Code, did use threatening, coercive and intimidating language and gestures to one Jack Musicant, investigator employed by and on behalf of the Code Supervisor, and engaged in investigating 4568
violations of Article III, Sections 1 and 4, Article IV, Sections 1 and 2, Article VI, Sections 1 (b-1) and (b-2), Article VII, Sections 2, 14, 15 and 22, and Article VIII, Section 3, of said Code, with the purpose, intent and effect of preventing said Musicant from performing his duties above set forth, and to enable the defendant herein to commit said violations and other violations of the said Code, and I have read to you the Code provisions.

Count 38th. On or about June 28th, 1934, the 4569
defendants A. L. A. Schechter Poultry Corporation and Martin Schechter, did submit to the Code Supervisor weekly reports from each week from the week ending May 19, 1934, to and including the week ending June 11, 1934, which reports contained false and fictitious statements relating to the range of daily prices and volume of sales for each kind and grade of poultry sold by them during the periods covered by each of said reports, in violation of Article VI, Sections 1 and 2 and Article VIII, Section 3, of said Code.

Article VII, Sections 1 and 2 of said Code, relate to the administrative duties of the Code

4370 Supervisor and Industry Advisory Committee, and Article VIII, Section 3, provides as follows:

Sec. 3. "Listing sales prices.—Every member of the industry shall submit a weekly report to the Code Supervisor. Such report shall show the range of daily prices and volume of sales for each kind, grade or quality of produce sold by the member of the industry during the reported week. I have already given you the definition of the term 'member of the industry.'"

4371 Count 39th. The defendants Joseph Schechter, Martin Schechter, Alex Schechter, Aaron Schechter, A. L. A. Schechter Poultry Corporation, and Schechter Live Poultry Market, Inc., have at all times heretofore wilfully, knowingly and unlawfully failed and refused to submit weekly reports or any reports whatever relating to the range of daily prices and volumes of sales for each kind, grade or quality of produce sold by them for the period from June 11, 1934, to and including the date of filing this indictment, in violation of said Article VIII, Section 3, of said
4372 Code, and I have read to you that provision of the Code.

For your information let me say—and this applies generally to this whole indictment—the date of filing of the indictment was July 26, 1934. So wherever the words "Date of filing the indictment" occur, they mean July 26, 1934.

Count 41st: During the week ending on or about May 18, 1934, the defendants A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter, and Alex Schechter did pay a person employed by them in the wholesale

slaughter house operated by them at 858 East 52nd Street, Brooklyn, New York, (the name of the said person being to the Grand Jurors unknown) wages amounting to less than 50¢ per hour for each hour worked by the said employee, the exact rate per hour being to the Grand Jurors unknown, in violation of Article IV, Sections 1 and 2, of said Code.

Article IV of said Code, in so far as is necessary for consideration herein, reads as follows:

Sec. 1. "No employee shall be paid in any pay period less than the rate of fifty (50) cents 4574 per hour. (d) Employers shall make payment of all wages in lawful currency or by negotiable checks payable on demand."

Sec. 2. "This article establishes a minimum rate of pay which shall apply, irrespective of whether an employee is actually compensated on a time rate, piecework, or other basis."

Count 42nd: This count is against the same defendants and for a violation of the same article and section of the Code as the 41st Count, except that it is for the week ending on or about 4575 May 25, 1934.

Count 43rd: This count is against the same defendants and for a violation of the same article and section of the Code as the 41st Count, except that it is for the week ending on or about June 1, 1934.

Count 44th: This count is against the same defendants and for a violation of the same article and section of the Code as the 41st Count, except that it is for the week ending on or about June 8, 1934.

4540 in violation of said Article VII, Section 2, of said Code.

Count 4th. On or about May 28, 1934, the defendants Martin Schechter, Alex Schechter, Aaron Schechter, and the A. L. A. Schechter Poultry Corporation transported from Philadelphia, Pennsylvania, to the wholesale slaughter house operated by them at 858 East 52nd Street, Brooklyn, New York, 59 baskets of live poultry; and knowingly, wilfully and unlawfully sold all
4541 of said 59 baskets of live poultry to the Mogen David Live Poultry Market, Inc., and to David Schechter, at 539 Snediker Avenue, Brooklyn, New York, without having the same inspected or approved in accordance with any rule, regulation or ordinance of the City of New York, in violation of Article VII, Section 22, of the said Code.

Article VII of said Code provides: "The following practices shall be deemed to be and shall constitute unfair methods of competition on the part of members of the industry, and are hereby
4542 prohibited."

Sec. 22. "Inspection of poultry.—The sale of live poultry which has not been inspected and approved in accordance with the rules, regulations, and/or ordinances of the particular area."

The Sanitary Code of the City of New York in force at the time in question and the regulations made pursuant thereto which have been offered in evidence provide for inspection.

Count 5th. The defendants Martin Schechter, Alex Schechter, Aaron Schechter and the A. L. A. Schechter Poultry Corporation transported approximately 5,200 pounds of live poultry on

or about May 26, 1934, and approximately 7,144 pounds on or about May 28, 1934, from Philadelphia, Pennsylvania, to the wholesale slaughter house operated by them at 858 East 52nd Street, Brooklyn, New York, and knowingly, wilfully and unlawfully sold a part of same to a person to the Grand Jurors unknown, during or about the week commencing May 26, 1934, the exact date and amount of such sale being to the Grand Jurors unknown, without having the same inspected or approved in accordance with any 4544
rule, regulation or ordinance of the City of New York, in violation of said Article VII, Section 22, of said Code.

I have already read to you what that article provides.

Count 24th. On or about June 20, 1934, at the said slaughter house at 858 East 52nd Street, Brooklyn, New York, the defendants Martin Schechter, Aaron Schechter, and the A. L. A. Schechter Poultry Corporation permitted and participated in selections of individual chickens taken from particular coops and half coops, in 4545
the sale of live poultry by them to a retail poultry dealer, by the name of Wagshul (his full name being to the Grand Jurors unknown), maintaining places of business in Brooklyn, and permitted said Wagshul to reject individual healthy chickens, in violation of Article VII, Section 14, of said Code.

Article VII of the said Code provides: "The following practices shall be deemed to be and shall constitute unfair methods of competition on the part of members of the industry and are hereby prohibited."

Count 46th: This count is against the same defendants and for a violation of the same article and section of the Code as the 41st Count, except that it is for the week ending on or about June 22, 1934.

Count 48th: This count is against the same defendants and for a violation of the same article and section of the Code, except that it is for the week ending on or about July 6, 1934.

4577 Count 51st: During the week ending on or about May 25, 1934, the defendants A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, did cause and permit a person employed at the wholesale slaughter house operated by them at 858 East 52nd Street, Brooklyn, New York (the name of said person being to the Grand Jurors unknown), to work at the said slaughter house in excess of 60 hours per week, the said employee not being engaged in any emergency, maintenance or repair work and the said violations occurring during a period other than the Jewish
4578 holidays, in violation of Article III, Section 1, of said Code.

Article III of said Code, so far as is necessary for consideration, reads as follows:

Section 1. "No employee shall be permitted to work in excess of forty (40) hours in any one week except as herein otherwise provided. (b) Slaughter house employees provided that they shall not work more than forty-eight (48) hours in any one week."

So the hours permitted for slaughter house employees are forty-eight hours per week.

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Count 52nd: This count is against the same defendants and for a violation of the same article and section of the Code as the 51st Count, except that it is for the week ending on or about June 1, 1934.

Count 53rd: This count is against the same defendants and for a violation of the same article and section of the Code as the 51st Count, except that it is for the week ending on or about June 8, 1934.

You will notice that two counts are omitted in there. 4580

Count 55th: This count is against the same defendants and for a violation of the same article and section of the Code as the 51st Count, except that it is for the week ending on or about June 22, 1934.

Count 57th: This count is against the same defendants and for a violation of the same article and section of the Code as the 51st Count, except that it is for the week ending on or about July 6, 1934. 4581

Let me call your attention, while we are at this point, to the fact that all of these allegations are on or about a certain date, and the date here alleged on or about is, in each instance, a Friday. The witness Schimmel, the bookkeeper, as to whose employment and payment these counts are directed, ended his week on Saturday. You will find that the indictment, for instance, speaks of the week ending on the 22nd, but in his testimony Schimmel speaks of it as the week ending the 23rd. When the Government uses the term "on or about," the day before or the day after is on or about, and so it is the same. So there will

be no confusion between these dates, the dates in the indictment are all Fridays, and Schimmel's dates were all Saturdays, the day after.

Count 60th: On repeated occasions during the period from May 16, 1934, up to and including the filing of this indictment, the exact date of said occasions being to the Grand Jurors unknown, the defendants A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter sold live poultry
4583 to Joseph Schechter and/or the Schechter Live Poultry Market, Inc., both of whom are persons not legally entitled to conduct the business of handling live poultry, and not having a permit, or license to handle, sell or slaughter live poultry, as is required by the ordinances of the City of New York and by the rules and regulations of the Board of Health of the City of New York, which said sales were in violation of Article VII, Section 15 of said Code.

Article VII of said Code provides: "The following practices shall be deemed to be and shall
4584 constitute unfair methods of competition on the part of the members of the industry, and are hereby prohibited."

Sec. 15. "Illegal sales.—The sale or resale of produce to any person not legally entitled to conduct a business of handling the produce of the industry (where a license or permit is required)."

Such permit is required by the ordinances of the City of New York and by the rules and regulations of the Board of Health of the City of New York, and is issued to the applicant and is not transferable.

We thus have thirty-three counts in all.

4585

First count for conspiracy.

Second and third counts for sale of unfit poultry.

Fourth and fifth counts for sale of uninspected poultry.

Twenty-fourth to thirty-third counts (both inclusive) for violation of straight killing.

Thirty-fourth to thirty-seventh counts (both inclusive) for threats, coercion and intimidation obstructing enforcement of Code.

Thirty-eighth count for false reports.

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Thirty-ninth count for withholding sales reports.

Forty-first to forty-fourth counts (both inclusive), forty-sixth and forty-eighth counts for payment of wages less than required by law.

Fifty-first to fifty-third counts (both inclusive), fifty-fifth and fifty-seventh counts for permitting employee to work more hours than allowed by law.

Sixtieth count for sales to persons not legally entitled to conduct the business of handling live poultry.

4587

Each of those is a separate count and you must consider each one of them separately and you must consider each defendant named in each of said counts to determine whether or not that defendant has committed the act charged. You cannot group them together and say as one goes so go the others. Each is a separate charge, each charge a separte offense, and each must receive separate consideration.

The provisions of the Code are standards of fair competition for the trade or industry or subdivision thereof. Any violation of such standards and any transaction in or affecting

4588 interstate commerce or foreign commerce is an unfair method of competition in commerce within the meaning of the act. The provisions in question referred to the alleged sales of poultry unfit for human consumption, violation of provisions for straight killing, anti-racketeering, filing of false reports, failure to file reports, payment of less than minimum wages allowed to employees, causing or permitting employees to work excessive hours, as well as persons not having permits to operate slaughter houses. Do
4589 the provisions of the Code, or any of them alleged in the substantive counts to have been violated by any of the defendants, affect interstate commerce? You have heard the evidence. The Government has brought its witnesses here. They have told you that such acts do affect interstate commerce. There is no need of going over all the evidence. You have heard it. You have heard the charge read. You know whether or not the allegations of the first count of the indictment were sustained by the evidence offered by the Government. The defendants have
4590 brought witnesses here and they say that such acts as are inhibited by the Code do not affect interstate commerce. Where does the truth lie? It is for you to determine. Take all the evidence; take what the condition was before; take what the condition has been since; take the various steps; take the steps that were instituted before the Code; take all the evidence together, and from all that evidence does it appear that the commission of acts in violation of the Code affects interstate commerce? If it does, then proceed to a consideration of these counts. Of course, if it does not, if you should find that it

does not affect interstate commerce, then, of course, we would be without jurisdiction, and the remedy would have to be pursued in some other place, because the jurisdiction of this Court is dependent upon interstate commerce being affected.

Did you understand me when I said that these represented standards? Do you know what that means? Of course, this is a large question. Do not make a mistake and put yourselves in a false position. It does not rest with this Court, it 4592
does not rest with you jurymen, to enter into a discussion as to whether you think the method that was selected was the best one, was the proper one, or whether it was improper. That is not our function. That rests with Congress. Congress had the right to select the method. They have selected this method.

The only question—this does not call for a discussion, as I said, of the merits of the scheme, that is not it—the only question with you is whether or not the witnesses for the Government who said that these acts which are prohibited 4593
affect interstate commerce were right, or whether the witnesses for the defendant who said that they do not affect interstate commerce were right. Which side of the question seems to you to be supported by the most convincing evidence? It is not the number of witnesses at all; it is the weight of the evidence. That is a question of fact. And I want to urge you gentlemen to decide it on the evidence, not on some views that you may have on the subject outside of the case, which, of course, play no part here. There is a place reserved for the expression of those views but it is not here in this court.

4594 *Charge to Jury*

The poultry which was brought in by truck from Philadelphia was moving in interstate commerce, and the poultry when sold by the commission merchants to the defendants, or any of them, was in interstate commerce, but it is not material whether the poultry was or was not at the time alleged in any of the several counts actually moving in interstate commerce. The question is whether the violations, or any of them, affected interstate commerce in any of the
4595 ways alleged in the indictment. Of course, the violation must have been substantial and not merely incidental. That does not mean, however, that the extent of the violation is the controlling factor, as violations may be large ones or small ones, and it would be a violation, even though it be a small one, if the act committed was clearly in violation of a provision of the Code and not merely incidental thereto. Of course, if the violation be a small one in the carrying on of a large business, that fact should be considered with the other facts in determining whether the violation was wilful, because it
4596 is possible where there is a large transaction of business and some small violation that that might in itself not be wilful. That must be considered with all the other facts. It is only to be considered, as I have said, and although small, and however small a violation it is, if it is a violation of a provision and it affects interstate commerce, then that is what the act says shall not be done.

You understand that, do you, gentlemen? Of course, it must be understood that the whole commerce in poultry would not be upset and disturbed by the act of any one individual un-

less it was of such a size as to create almost an explosion, and the law did not fix any such qualification as that. The law says that if those acts are done which it says shall not be done and which are acts which affect interstate commerce, then it is not the size of the act; it is the act in and of itself that is the violation. Do you understand me? Is that plain?

The Code of Fair Competition having been approved by the President under the terms of the statute, and that was conceded, any violation of any provision thereof knowingly, wilfully and unlawfully committed, in any transaction in or affecting interstate or foreign commerce is a crime. 4598

These defendants stand before you not all, but some, in one count, and others in other counts, in all thirty-three separate and distinct offenses. One is the conspiracy; that is not a substantive crime. Thirty-two of them are substantive crimes, certain definite violations of the Code. It is for you to determine whether as to any, some, or to all of them, the Government has sustained beyond a reasonable doubt proof of the commission of the offense. 4599 These counts are not the same as the conspiracy, where there must be two persons. One could be guilty of any one of these substantive crimes because they are crimes in and of themselves. And it is of importance because the defendants took the stand, and one of them, Martin Schechter, at least, in describing his position at the scales, put himself outside of the room in which the selections of the chickens and the slaughtering were done. You have the testimony of the Government witnesses as to where these defendants were at the

4600 time the several offenses charged in these separate counts were committed, and you must determine whether any one or all of the defendants so charged did participate in the crime. If any one of the defendants, although at or about the place, was not in a position to see what was going on, then, of course, it would have to be shown that he knew what was being done and that it was a general course and general practice; otherwise, as to that offense, the evidence might not sustain the charge as to that par-
4601 ticular thing.

I am not going into the evidence because you have heard the evidence on both sides; you have heard the Government's witnesses describe how these things happened, where the defendants were at the time they happened. It is for you to say. I simply called your attention to the fact that Martin Schechter made that statement in order to make plain to you what I mean by my instructions that you must consider each count with reference to each of the defendants to see whether or not the defendant is properly
4602 charged in that particular crime.

Of course, these offenses must have been done, to be crimes, wilfully, knowingly and unlawfully. That thing is wilfully done which you do of your own volition, not under any duress or compulsion; that thing is knowingly done when you know the nature and the consequence of the act which you are performing (all men are presumed to know the nature and consequence of their acts); and that act is unlawful which the law says you shall not do.

This case is important, they are all important, this is important to the Government, on the one

hand, and it is important to the defendants on the other hand. There is no question about that. There are many counts and they requfre your very careful consideration. There have been a number of things which have come into the case which I must call to your attention. In the first place, one witness, who was called by the defendant, was asked on the stand whether he had ever been convicted of a crime, to which he answered yes. There must be no mistake about the purpose for which that is allowed. That is 4604
not any proof of the commission of any of the offenses charged in this indictment, and we are not trying these defendants for any offense for which that witness was convicted. Let us get that straight. The sole purpose of allowing that question to be put to him was this: that the law says the jury has a right in determining the weight and credence they will give to the testimony of any witness to decide whether they will give the same weight and credence to the testimony of a person who has been convicted of a crime that they would to any other citizen 4605
who has not, all things being equal. That is the purpose of that; that is the sole purpose. You have a perfect right to consider that in weighing the testimony of that witness, but that is the only purpose for which you may make use of it.

There has come up here the question of accommodation sales. There is nothing mentioned in the Code about accommodation sales. There is nothing mentioned in the ordinance with reference to inspections about accommodation sales. It is undoubtedly true that if a person, as the agent of another, made a purchase of produce, chickens, in Philadelphia, and brought it into

Brooklyn and delivered it forthwith to the person whose agent they were, there would not be any crime because they, on the way, did not have it inspected, for the duty of having it inspected would be the duty of the principal to whom it was delivered. However, if poultry is purchased outside of the State, brought into the State and thereafter sold, whether it is sold with or without profit, if an actual sale takes place, that sale is putting into circulation that produce in this
4607 State; under the laws that produce should be inspected before it is sold. When you come to the question of these accommodation sales, so-called, there is evidence here in the books—and it is for you to say whether they were accommodation sales for another purpose—which I will call to your attention. It was contended here, I have not examined the books, it is for you to examine them, it was contended here that the books showed a small profit on these so-called accommodation sales. If that is so, then they lose all question of accommodation, because, no matter how small the profit, they were sold for a profit.
4608 Whether these defendants acted on the belief. in making their reports, that these accommodation sales might properly be omitted from the reports, acted on the advice of counsel, that would go to the question of whether they wilfully made false reports. We are away from the inspection proposition now; we are dealing with the reports, whether they in good faith and belief, omitted these accommodation sales, and were advised by counsel they could be omitted, and they were actually sales where no profit was received. That is something that may be and properly should be considered in determining whether the failure to include them in the reports was

wilful, whether it was done wilfully and knowingly and unlawfully.

If, however, there was a profit, then there was not an accommodation sale, and if it appears that the total amount which was not reported of the business, that is, if it appears that the total amount of the business was some one hundred and fifty-odd thousand pounds and the account was for one hundred and six thousand, there was a difference of some forty-five thousand pounds, but that the accommodation sales so claimed amounted to less than forty-five thousand, then that difference, of course, would not be covered by accommodation sales; and even although it was believed that accommodation sales could properly be omitted, that would not be an excuse for the omission of about twelve thousand pounds difference. That is presenting that situation to you as to these accommodation sales. Important? Surely. Were they acting in good faith? Was it something that somebody would know was wrong? That goes to the question of whether they wilfully did it or knowingly did it. But if the amount reported, plus the accommodation sales, was less than the total amount, why, then, of course, that total would count on the question of wilfulness and knowledge. It would have to be considered with reference to that. 4610 4611

Gentlemen, there have been many witnesses called in this case. You had the opportunity of observing the manner and demeanor of each of those witnesses. It is for you to say how much you are going to believe of what each witness testified to, and that is the only way you can decide this case, first to determine what you are

4612 going to believe as to what each witness testified to. You observed their manner and demeanor when they testified when the defendants took the stand. As to each witness, did they all, did any of them or did they not, impress you as being anxious to tell the truth, not trying to evade, not trying to hide anything? But giving you the truth as they saw it, with the differences that there always will be in the stories of human beings, because it could hardly be expected of
4613 two witnesses, if they are testifying honestly, to ever describe a thing in exactly the same way. We see different things at different angles, but, with the honest difference that there may be, did the witnesses here, all of them, impress you as truthful? If so, then comes the question of reasonable probability.

What is the reasonably probable and true story? Who is probably telling the truth? Are the witnesses for the Government telling the truth? Are the witnesses for the defense, including the defendants, telling the truth. Wherever there is a conflict in their testimony (you have
4614 had a number of things as to which they differed, I don't care to advert to any particular count, but you have had a number of counts where there is a difference, you have had a number of counts where the defendants and their witnesses took a position different than that of the Government), wherever there is a conflict in their testimony, which is the reasonably probable true story, which story told here has the earmarks of truth? That which is reasonably probable is generally true too, not always of course, for there are exceptions to every rule, and there are exceptions to that one, but it is a great aid

in determining the truth to weigh its reasonable probability. So do that here.

Of course, as an aid to your determination, you have the right, if you believe that any witness has taken that stand and wilfully and knowingly testified falsely to a material fact,—not some immaterial thing, but a material fact,—to disregard all of the testimony of that witness. You are not bound to do it, because you may accept that which you believe to be true and reject that which you believe to be false. But 4616
that is a rule of human reasoning that you probably apply every day in your lives in business, perhaps unconscious of the fact that there was any such rule, but it is so.

Let me urge you here, gentlemen, not to take a stilted position. Do not come here and place yourselves on a pedestal and think because you are a juror you have to act in a way which is different than the way you act naturally. That is not so. You are called from out of the mass of the people to bring to bear your independent judgment here and to use the same methods of determining the weight and credence you will 4617
give to the testimony of any of these witnesses that you have developed in your intercourse with the world at large. You know how you determine whether you believe people when they talk to you about material things, and you have a right to apply that same rule here. That is what you are here to do, act as perfectly natural human beings, in deciding this question.

The defendants took the stand and the defendants called witnesses who testified to their good character. Good character is an asset. Good character sometimes, in some classes of

4618 cases, is sufficient to raise reasonable doubt, but good character must not be considered alone and to the exclusion of all other evidence. Evidence of good character is just one class of evidence in the case that must be considered with all the other evidence in the case in determining the weight you will give to it.

Gentlemen, let us have one thing certain and definite before we close, and that is this: There is a fair division of labor between you and me. You are the sole judges of the facts. You need
4619 not try to find out—if you think you can or if it exists—whether I have an opinion on the facts or not. If you think that you know that I have one and what it is, disregard it. I am not responsible for the determination of the facts. That rests on your consciences. That is what you have sworn to do, determine the facts for yourselves on the evidence and on the law as I give it to you, and that brings me back to my part in the division of labor. You are bound to accept my instructions on the law, whether you believe they are the law or not. If I make
4620 an error of law, it can be corrected; but you are presumed to have accepted my instructions on the law, and if you do not do that, but determine the law for yourselves, and then render a verdict and make a mistake, nobody on earth can correct your error because it cannot be apparent; it is hidden under the presumption that you followed my instructions.

Take the law as I have given it to you and decide the case on that law. This is not a case for sympathy, this is not a case for vengeance. You have no concern with what follows your verdict at all. Your only concern is with your verdict and that it shall be a fair verdict on the

evidence and on the law as the Court has given it to you. All other matters connected with this case are beyond your concern. You need not pay any attention to them. You have nothing to do but determine the questions of fact and then let the rest take care of itself.

I hope I have made myself clear. If there is anything you do not understand now, if you will just tell me, I will be glad to explain it to you as well as I can before you go out.

Mr, Heller: May it please your Honor, I except to so much of your charge as does not adequately explain to the jury, what is meant by affecting interstate commerce. I ask your Honor to charge that the indictment as you read it states that the defendants' conduct in each particular count alleged, tended to and did diminish the total volume or value of the commerce that comes into the State, that their particular conduct disrupted the orderly flow thereof and diminished and demoralized the character thereof, and unless the jury finds that their conduct did such a thing, their act did not affect interstate commerce.

4622

4623

The Court: I have already charged them. I read it at great length, the whole indictment. I told them that the charge in the indictment is what the Government is required to prove and asked the jury to determine whether the Government has proved its case. I am not going to charge separate parts. I made that charge plain and distinct, and I think the jury understood it. I read the whole of the first count, too.

Mr. Heller: Exception. And I ask your Honor to charge that what I just said applies to each particular count separately; they must be considered separate and apart.

4624

The Court: I have already charged them at very great length. Each count, of course, depends upon the acts affecting interstate commerce. I find no necessity for further charging the jury.

Mr. Heller: Exception. I also ask your Honor to charge the jury that the jury must find that on or about May 16th a conspiracy was entered into between these defendants——

The Court: I thought there was a more inclusive provision, that between certain dates.

4625

Mr. Heller: Just May 16th, on or about.

The Court: Well, they did not have to do it on that day. On or about May 16th is the beginning of the conspiracy, as I remember it. What is your clause?

Mr. Heller: Page 7.

The Court: Let me see it. I cannot carry this all in my head.

Mr. Heller: Page 7.

The Court: On or about May 16, 1934, and continuously thereafter,—the conspiracy is alleged to have been formed May 16th,—up to and

4626

including the date of the filing of the indictment. So that would mean that the conspiracy would have had to be formed before the commission of the overt acts. I instructed the jury on that at great length.

I am afraid we confused it.

I said to you, gentlemen, that the time of the conspiracy, the formation of it, is alleged to have been on or about May 16, 1934, and as to each defendant, quite naturally, they must have become a part and parcel of the conspiracy before the commission of the overt act, or they would not be responsible for anything except that

which transpired after the time they became members of the conspiracy, if there were any, and the time of filing the indictment was the 26th of July, 1934. And the conspiracy,—I will make it plain,—the conspiracy ended on that day, the day of the arrest, but the filing of the indictment, we will say, is the end of the conspiracy. 4627

Mr. Heller: I also ask your Honor to charge that under Article III a normal work day shall not exceed eight hours on any day except Thursday and Saturday, when it shall not exceed twelve hours. 4628

The Court: Yes, I will charge that, if you want me to.

Mr. Rice: Your Honor has in mind that the offense charged is the offense of working in excess of forty-eight hours a week.

The Court: That is right.

Mr. Rice: We did not charge the offense of working in excess of any particular hours for any particular day.

The Court: That is right. I have told the jury at great length the charge was forty-eight hours minimum a week. 4629

Is that all?

Mr. Heller: Yes, sir.

The Court: All right; then the jury will retire.

(To counsel): Will you both get together your exhibits and both of you look at them? Once in a while something gets in and then there is always confusion. Each of you has his exhibits and each of you please inspect your papers and give them to the jury so there will be no question that anything goes to them that is not properly in.

4630 Mr. Rice: Your honor, in order that there may be no confusion, is it understood that the two alternate jurors——

The Court: I am going to discharge them—I want you to get your papers together first—I am going to discharge them, that is correct. Get your exhibits all ready.

Mr. Heller: My papers are on the table.

The Court: Then we will discharge Jurors Nos. 13 and 14.

4631 (The jury retired at 12:40 P. M.)

(The jury returned at 3:20 P. M., at which time the following occurred:)

The Court: I have received a note from you gentlemen reading, "Will you please give us the Judge's charge relating to conspiracy?" Do you mean that you want to have the whole count read over or my charge after I had finished reading the count?

The Foreman of the Jury: After you had finished reading the count.

4632 The Court: You mean after I had finished reading the count; then you mean the charge; is that what you want? You do not want the whole count read over; is that right? When I read the count of the indictment then I followed it with the charge.

The Foreman: That is correct.

The Court: You want to start with the charge, following the reading of the count?

The Foreman: Yes, sir.

The Court: Then the stenographer will read the charge on conspiracy following the reading of the count of the indictment, Count 1.

(Whereupon the stenographer read to the jury from page 1580, line 5, to and including page 1586, line 4, of this record.)

The Foreman: That is all we wanted.

(The jury again retired at 3:50 P. M.)

(The jury was sent to dinner at 6:30 P. M. and instructed to be back at 8:00 P. M.)

After Recess, 8 P. M.

(Met pursuant to adjournment at 8 P. M.; present as before.)

(The jury continued their deliberations.)

(At 11:30 P. M. the following occurred:)

4634

The Court: We will take a recess until ten o'clock tomorrow morning. I will let the defendants go on their bail. They must be here tomorrow morning at ten o'clock. I am now sending the jury to a hotel for the night.

(Recessed to Thursday, November 1, 1934, at 10 A. M.)

United States of America *vs.* J. Schechter, *et al.*

Brooklyn, N. Y., November 1, 1934.

4635

(Met pursuant to recess at 10:00 A. M.; present as before.)

(The jury continued their deliberations.)

(The jury returned at 11:30 A. M.)

The Court: As I understand your request, you want the testimony of Leo Schimmel, witness for the defense, read to you, and then you want to know what week Exhibit 37 refers to, and by Exhibit 37 do you mean the slip which had on it the number of hours?

The Foreman of the Jury: That is correct, your Honor, just want to know the date of that slip and the date that slip applied to.

4636 The Court: I will answer that and then the stenographer may read to you. That slip referred to what the witness Schimmel described as the week ending June 23rd. Is that the one you mean?

The Foreman: That is correct.

The Court: That week is described in the counts as to hours of labor and as to wages paid as the week ending on or about June 22nd, and "on or about," as I said to you, includes the day before or the day after.

4637 The count that relates to the amount of wages paid during the week ending June 22, 1934, is the forty-sixth count, and the count that relates to the hours of labor on the week ending as alleged on or about June 22, 1934, is the fifty-fifth count. Forty-sixth, as to the rate of wages; and the fifty-fifth as to the hours of work.

The Foreman: Your Honor, that is all we want to know. We do not need the testimony.

The Court: You asked for the testimony.

The Foreman: It was in his testimony. I believe that was mentioned in his testimony.

4638 The Court: There is no question that that is correct?

Mr. Heller: I assume whatever your Honor said is all right.

The Court: Where is the exhibit? If there is any question, we will have none. Where is the exhibit?

Mr. Heller: The exhibit does not have the date on it. That is the reason I believe the jury wants to know.

Mr. Rice: That is correct.

The Court: Find Exhibit 37. We will have no argument about it at all

4639

Mr. Heller: There isn't any argument. I say whatever your Honor says is correct.

Mr. Rico: I agree that that is correct too, your Honor.

The Court: It was the week ending June 23rd, as testified to by Schimmel, and the indictment says on or about June 22nd. I instructed you about that before in the main charge, that there was a difference of a day, in that the indictment was "on or about" and Schimmel's testimony was a date, his being Saturday, the other being "on or about Friday." Is that all?

4640

The Foreman: That is all we want to know.

(The jury retired at 11:40 A. M.)

(The jury returned at 11:50 A. M.)

The Clerk of the Court: Gentlemen of the jury, have you agreed upon a verdict?

The Foreman of the Jury: We have.

The Clerk: Case of the United States against Joseph Schechter, Martin Schechter, Alex Schechter and Aaron Schechter, how do you find——

4641

The Court: Wait a moment. And A. L. A. Schechter Corporation.

The Clerk: And the A. L. A. Schechter Corporation and the Schechter Live Poultry Corporation, how do you find the defendants, guilty or not guilty, on the first count?

The Foreman: Guilty.

The Clerk: On the second count?

The Foreman: Guilty.

The Clerk: Third count?

The Foreman: Not guilty.

The Clerk: Fourth count?

The Foreman: Guilty.

4642 *Verdict*

The Clerk: Fifth count?
The Foreman: Guilty.
The Clerk: Twenty-fourth count?
The Foreman: Guilty.
The Clerk: Twenty-fifth count?
The Foreman: Guilty.
The Clerk: Twenty-sixth count?
The Foreman: Guilty.
The Clerk: Twenty-seventh count?
The Foreman: Guilty.
The Clerk: Twenty-eighth count?
4643 The Foreman: Guilty.
The Clerk: Twenty-ninth count?
The Foreman: Guilty.
The Clerk: Thirtieth count?
The Foreman: Guilty.
The Clerk: Thirty-first count?
The Foreman: Guilty.
The Clerk: Thirty-second count?
The Foreman: Guilty.
The Clerk: Thirty-third count?
The Foreman: Guilty.
The Clerk: Thirty-fourth count?
4644 The Foreman: Not guilty.
The Clerk: Thirty-fifth count?
The Foreman: Not guilty.
The Clerk: Thirty-sixth count?
The Foreman: Not guilty.
The Clerk: Thirty-seventh count?
The Foreman: Not guilty.
The Clerk: Thirty-eighth count?
The Foreman: Guilty.
The Clerk: Thirty-ninth count?
The Foreman: Guilty.
The Clerk: Forty-first count?
The Foreman: Not guilty.

4645

The Clerk: Forty-second count?
The Foreman: Not guilty.
The Clerk: Forty-third count?
The Foreman: Not guilty.
The Clerk: Forty-fourth count?
The Foreman: Not guilty.
The Clerk: Forty-sixth count?
The Foreman: Guilty.
The Clerk: Forty-eighth count?
The Foreman: Not guilty.
The Clerk: Fifty-first count?

4646

The Foreman: Not guilty.
The Clerk: Fifty-second count?
The Foreman: Not guilty.
The Clerk: Fifty-third count?
The Foreman: Not guilty.
The Clerk: Fifty-fifth count?
The Foreman: Guilty.
The Clerk: Fifty-seventh count?
The Foreman: Not guilty.
The Clerk: Sixtieth count?
The Foreman: Guilty.

4647

The Clerk: You say you find the defendants, Joseph Schechter, Martin Shechter, Alex Schechter, Aaron Schechter, the A. L. A. Schechter Corporation and the Schechter Live Poultry Corporation guilty on the first count——

The Court: As they are named.

The Clerk: Guilty on the first, second, fourth, fifth, twenty-fourth, twenty-fifth, twenty-sixth, twenty-seventh, twenty-eighth, twenty-ninth, thirtieth, thirty-first, thirty-second, thirty-third, thirty-eighth, thirty-ninth, forty-sixth, fifty-fifth and sixtieth counts, and not guilty on the third, thirty-fourth, thirty-fifth, thirty-sixth, thirty-seventh, forty-first, forty-second, forty-third,

4648 forty-fourth, forty-eighth, fifty-first, fifty-second, fifty-third and fifty-seventh, and so say you all?

Mr. Heller: May I poll each juror?

The Court: Do you want to poll on each count?

Mr. Heller: No, sir.

The Court: Just on the verdict as rendered?

The Clerk: Mr. A. Schmidt, how do you find the defendants, Joseph Schechter, Martin Schechter, Alex Schechter, Aaron Schechter, the A. L. A. Schechter Corporation, and the Schechter Live Poultry Corporation, guilty or not guilty, on the first count?

4649 Mr. Schmidt: Guilty on certain counts, I don't just remember.

The Court: He said he did not want them polled as to each count. He wanted to know if they agreed with the verdict as presented. What do you want?

Mr. Heller: As to each count and each defendant.

The Court: You will have to take each count; there are different defendants.

4650 Mr. Schmidt: Guilty on Count 1, guilty Count 2, not guilty Count 3, guilty Count 4, guilty Count 5, guilty Count 24, guilty Count 25, guilty Count 26, guilty Count 27, guilty Count 28, guilty 29, guilty 30, guilty 31, guilty 32, guilty 33, not guilty 34, not guilty 35, not guilty 36, not guilty 37, guilty, 38, guilty 39, not guilty 41, not guilty 42, not guilty 43, not guilty 44, guilty 46, not guilty 48, not guilty 51, not guilty 52, not guilty 53, guilty 55, not guilty 57, guilty 60.

The Clerk: Irving H. Wills.

Mr. Wills: No. 1, guilty; 2, guilty——

Mr. Heller: Just ask each one whether they agree with the first juror.

4651

The Clerk: As to Irving H. Wills, do you agree with the verdict as the Foreman gave it?

Mr. Wills: I do.

The Clerk: Mr. James F. Woods.

Mr. Woods: As given.

The Clerk: James H. Whitehead.

Mr. Whitehead: As given.

The Clerk: Edward Kavanaugh.

Mr. Kavanaugh: As given.

The Clerk: Joseph Robinson.

Mr. Robinson: As given.

4652

The Clerk: Morton Baumgarten.

Mr. Baumgarten: As given.

The Clerk: Thomas V. Martin.

Mr. Martin: As given.

The Clerk: James Roxby.

Mr. Roxby: As given, with one proviso; that on that Count 1, the principal count, we found him guilty on one section of that item.

The Court: No; you find him guilty on the count.

Mr. Roxby: The last one, I think it is Section I, that has not been read, and I would like to put it in; otherwise the list as read is complete.

4653

The Court: You said you agreed on a verdict. If you have not agreed, why, I want to know it. You said you agreed upon a verdict. The verdict on the first count was announced as guilty. Is it or is it not? Have you or have you not agreed?

The Foreman: We have agreed guilty on Count 1.

Mr. Roxby: Well,——

The Clerk: Mr. Roxby, how do you agree as to the verdict on the first count, guilty or not guilty?

Mr. Roxby: Guilty under those conditions that I have stated.

4654 *Verdict*

The Court: Now, guilty or not guilty? You came in and said you had agreed upon a verdict. Have you agreed or haven't you?

Mr. Roxby: We have agreed.

The Court: Then what do you find, guilty or not guilty, on that count?

Mr. Roxby: Guilty; otherwise as read.

The Court: Is that your verdict? Your verdict is guilty on the first count?

Mr. Roxby: That is my verdict.

4655 Mr. Baumgarten: If he is guilty on this charge (i), does that consider the entire——

The Court: The count is presented. You said you agreed upon a verdict. Now, if you have not agreed on it, and if you have agreed on the others, we will send you back on that.

Mr. Heller: I think the jury did not understand Count 1. They may require further instructions.

The Court: They did not ask for it and you are not in position to ask for it.

Have you agreed on that or have you not?

Mr. Roxby: Yes, sir.

4656 The Clerk: Samuel Blank.

Mr. Blank: As given.

The Clerk: Joseph Sommers.

Mr. Sommers: As given.

The Clerk: Noel Andrews.

Mr. Andrews: As given.

The Court: Now there is no doubt about it, you have agreed on a verdict of guilty on the first count, that is right, it is?

(Several jurors answered "Yes.")

The Court: No doubt about that? That is the verdict?

The Foreman: That is the verdict.

4657

The Court: You gentlemen in the back, that is your verdict, guilty, that is, the seventh and the ninth? That is correct, is it?

Mr. Roxby: Correct.

Mr. Baumgarten: Yes, sir.

The Court: Then there is no question.

Mr. Heller: I move, on behalf of the defendants, to set aside the verdict on the ground that it is contrary to the evidence, contrary to the law, against the weight of evidence, and on all the exceptions taken during the trial, on your Honor's refusal to declare a mistrial, on the further ground that your Honor refused to charge as requested, on the exceptions taken during the course of the trial——

4658

The Court: I deny each one. You have an exception to the denial of each one.

Mr. Heller: I have not finished (Continuing.) —on your Honor's failure to dismiss the indictment and to direct a verdict of not guilty at the end of the Government's case, and on the whole case, and I move again to dismiss the indictment.

I move further to set aside the verdict on the ground that the Government has failed to establish conspiracy as alleged in the first count of the indictment which was submitted to the jury.

4659

I further move in arrest of judgment and in arrest of sentence, on the ground that the indictment, including all the counts thereof, fails to state any offense against the United States of America.

I move to set aside the verdict on the ground that the Government failed to show any crime, express or implied, on the part of the defendants to participate in the conspiracy alleged in the indictment, and on the further ground that

4660 *Motion to Set Aside Verdict*

the jury's verdict was not sustained by the evidence; on the further ground that there was not credible or other evidence to support the jury's verdict.

I move to set the verdict aside on the ground that the guilt of the defendants was not established beyond a reasonable doubt.

I move to set aside the verdict on the ground that the acts proven did not constitute a crime, or the crime charged in the indictment, and particularly did not constitute a violation of any
4661 Federal Statute.

I further move to dismiss on the ground that the jury did not quite understand the meaning of the charges against the defendants herein.

The Court: The jury has been inquired about it. Is there any doubt in your mind as to the guilt on the first count? That is understood?

The Foreman: No doubt.

The Court: I am asking you two: Any question at all about it?

Mr. Roxby: No.

Mr. Baumgarten: Guilty.

4662 The Court: The motions are denied, each of them.

Mr. Heller: Exception.

The Court: And you have an exception to each denial separately. I deny each and every motion and give you an exception to each of them separately.

Minutes of Sentence 4663

Brooklyn, N. Y., November 9, 1934.

10:30 A. M.

(Appearances as before.)

The Court: The sentence of the Court as to Joseph Schechter is that you be committed to the custody of the Attorney General or his designated representative to be imprisoned for a period of three months in the House of Detention in New York and fined $1,000 on Count 1, and that you be fined $100 on each of Counts 27, 28 and 39. That makes in your case three months' imprisonment and $1,300 in fines in all. 4664

As to Alex Schechter the sentence of the Court is that you be committed to the custody of the Attorney General or his designated representative to be imprisoned for a period of two months in the House of Detention in New York and fined $500 on Count 1, and that you be fined $100 each on Counts 4, 5, 25, 31, 32, 33, 39, 46, 55 and 60, making two months' imprisonment and $1,500 in fines in all.

As to Aaron Schechter the sentence of the Court is that you be committed to the custody of the Attorney General or his designated representative to be imprisoned for a period of one month in the House of Detention in New York and fined $500 on Count 1 and that you be fined $100 on each of Counts 2, 4, 5, 24, 25, 26, 29, 30, 31, 32, 33, 39, 46, 55 and 60, making one month's imprisonment and $2,000 in fines in all. 4665

As to Martin Schechter the sentence of the Court is that you be committed to the custody of the Attorney General or his designated representative to be imprisoned for a period of one month in the House of Detention in New York and fined $500 on Count 1, and that you be fined $100 on each of Counts 2, 4, 5, 24, 25, 26, 29, 30,

4666 *Government's Exhibits 1-6*

31, 32, 33, 38, 39, 46, 55 and 60, making one month's imprisonment and $2,100 in fines in all.

I will fine the Schechter Live Poultry Market, Inc., $25 on each of Counts 1, 27, 28 and 39, making $100 in fines in all.

As to the A. L. A. Schechter Poultry Corporation, I will treat them the same way and fine them $25 on each of Counts 1, 2, 4, 5, 24, 25, 26, 29, 30, 31, 32, 33, 38, 39, 46, 55 and 60, making $425 in fines in all.

4667

Government's Exhibits 1, 2, 3 and 4

These exhibits represent certificates of incorporation of (1) Schechter Live Poultry Market, Inc.; (2) A. L. A. Schechter Poultry Corp.; (3) Mogen David Live Poultry, Inc., and (4) certificate of doing business of Rugby Live Poultry Market. These entire exhibits may be submitted to the appellate court without printing.

4668

Government's Exhibit 5

Signature card of A. L. A. Schechter Poultry Corp. with Manufacturers Trust Co. requiring signatures of Alex Schechter and Louis Schechter. This exhibit may be submitted to the appellate court without printing.

Government's Exhibit 6

Bank resolution of A. L. A. Schechter Poultry Corp. signed by Alex Schechter, president, Louis Schechter, secretary, Aaron Schechter, treasurer, for deposit with Manufacturers Trust Co. This entire exhibit may be submitted to the appellate court without printing.

UNITED STATES DEPARTMENT OF AGRICULTURE

Bureau of Agricultural Economics
Telephone - Barclay 5240

FREIGHT UNLOADS OF LIVE POULTRY BY STATES AT NEW YORK DURING 1939 (CARLOTS)

Market News Service
53 Park Place-Room 902-New York

STATES	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	TOTAL 1939 -	TOTAL 1938
LOUISIANA - MASSACHUSETTS													1 - 1	2
ALABAMA	11	22	24	37	23	16	10	12	2	1	15	8	181	176
ARKANSAS	43	40	40	52	45	34	38	35	10	7	10	15	369	410
COLORADO	7	9	5	2	5	4	7	11	5	9	12	10	86	89
FLORIDA	-	-	1	1	-	-	-	-	-	-	-	-	2	-
GEORGIA	12	29	28	60	27	14	3	3	-	-	2	1	179	151
ILLINOIS	53	36	28	36	40	46	61	76	105	140	119	140	880	874
INDIANA	49	29	19	39	42	51	72	84	107	164	156	151	963	842
IOWA	24	4	2	1	-	19	44	45	46	64	44	61	354	586
KANSAS	59	28	27	27	30	32	22	37	45	45	28	42	422	474
KENTUCKY	31	32	46	67	41	23	17	22	23	27	31	37	397	741
MICHIGAN	-	-	-	-	-	-	1	1	4	-	-	-	6	6
MINNESOTA	6	-	-	1	-	4	9	14	20	36	25	16	131	164
MISSISSIPPI	7	28	21	15	9	1	1	1	-	-	6	1	90	188
MISSOURI	127	78	82	122	120	112	173	235	211	216	182	216	1,874	1,896
NEBRASKA	101	55	40	36	60	87	89	112	136	168	125	147	1,156	1,078
NEW MEXICO	2	3	3	3	-	-	-	-	-	-	-	-	13	4
NEW YORK	-	-	-	-	-	-	-	1	-	-	-	-	1	1
NORTH CAROLINA	30	34	60	52	19	11	11	10	6	4	1	2	240	158
NORTH DAKOTA	-	-	-	-	-	-	-	3	7	24	21	2	57	33
OHIO	9	2	-	1	-	16	18	16	44	77	80	72	335	343
OKLAHOMA	112	100	103	99	72	61	49	75	51	40	37	36	835	873
PENNSYLVANIA	3	5	9	-	2	1	3	2	1	2	9	7	44	36
SOUTH CAROLINA	11	17	28	28	19	8	5	4	1	1	-	3	125	41
SOUTH DAKOTA	19	8	6	5	9	10	24	19	32	45	48	48	273	313
TENNESSEE	77	101	125	203	114	50	51	46	22	19	34	42	884	1,060
TEXAS	55	67	58	51	42	29	12	6	2	1	16	9	348	436
UTAH	-	-	-	-	1	3	-	-	-	-	-	-	4	-
VIRGINIA	2	4	3	16	6	2	3	3	1	-	9	7	56	68
WISCONSIN	2	1	-	-	3	15	31	20	30	35	27	11	175	219
WYOMING	2	1	-	1	-	1	-	-	1	1	3	3	13	5
TOTAL - 1939	854	733	760	955	729	650	754	893	912	1,126	1,040	1,087	10,493	
TOTAL - 1938	896	947	1,006	931	913	801	754	904	989	1,056	1,095	975	11,267	11,267

Government's Exhibit 8

UNITED STATES DEPARTMENT OF AGRICULTURE

Bureau of Agricultural Economics
Tel-Cortland 7-9800

FREIGHT UNLOADS OF LIVE POULTRY BY STATES AT NEW YORK DURING 1930(CARS)

Market News Service
Room 810,80 Centre Street-New York

STATES	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	TOTAL
ALABAMA	9	17	28	23	17	4	3	5	2	-	6	5	129
ARKANSAS	20	31	34	51	33	26	25	44	18	12	16	39	349
COLORADO	9	13	12	6	8	8	5	4	6	5	5	1	82
DELAWARE	-	-	-	-	1	-	-	-	-	-	-	-	1
FLORIDA	2	-	2	-	-	-	-	-	-	-	-	-	4
GEORGIA	4	18	19	25	12	-	-	-	-	-	-	1	79
ILLINOIS	101	56	52	60	54	59	84	106	156	135	146	165	1,174
INDIANA	69	37	31	48	56	59	90	86	163	167	128	174	1,168
IOWA	43	11	13	6	19	63	87	66	94	64	48	85	604
KANSAS	51	39	47	44	45	33	29	36	60	47	27	51	509
KENTUCKY	21	15	38	82	66	30	26	58	49	42	30	54	511
MARYLAND	-	-	2	-	-	-	-	-	-	-	-	-	2
MINNESOTA	14	7	4	1	2	10	18	13	10	21	10	13	123
MISSISSIPPI	5	11	20	18	7	-	2	2	2	-	5	4	76
MISSOURI	124	97	113	150	129	159	192	231	219	201	192	212	2,019
NEBRASKA	105	84	67	55	64	79	87	95	131	130	75	110	1,082
NEW JERSEY	-	-	-	-	1	-	-	-	-	-	-	-	1
NEW MEXICO	1	1	-	-	-	-	-	-	-	-	-	-	2
NORTH CAROLINA	12	21	23	21	12	4	2	2	2	-	3	5	107
NORTH DAKOTA	-	-	-	-	-	-	-	3	19	25	7	1	55
OHIO	18	2	1	1	4	14	14	8	42	57	90	54	305
OKLAHOMA	84	119	134	119	67	47	31	26	29	23	23	61	763
PENNSYLVANIA	2	-	-	-	-	1	-	2	4	1	-	2	12
SOUTH CAROLINA	8	8	10	13	7	-	2	-	-	-	-	1	49
SOUTH DAKOTA	35	13	7	5	8	18	15	6	13	33	31	30	214
TENNESSEE	46	47	76	138	119	51	29	26	25	10	37	38	642
TEXAS	45	78	67	66	34	18	6	1	1	-	4	12	332
VIRGINIA	5	10	13	12	5	3	1	5	4	1	18	14	91
WISCONSIN	2	-	-	-	2	18	32	24	36	39	25	10	188
WYOMING	1	-	-	-	-	1	1	-	-	1	-	-	4
TOTAL - 1930	841	735	813	954	772	705	781	849	1,085	1,014	986	1,142	10,677
1929	854	733	760	955	729	650	754	893	912	1,126	1,040	1,087	10,493

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UNITED STATES DEPARTMENT OF AGRICULTURE

Bureau of Agricultural Economics
Tel-Cortland 7-9500

Market News Service
Room 810-80 Centre Street, New York City

FREIGHT UNLOADS OF LIVE POULTRY BY STATES AT NEW YORK DURING 1931 (CARS)

STATES	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	TOTAL
ALABAMA	18	34	43	24	16	12	8	4	2	-	3	2	166
ARKANSAS	48	45	49	35	31	20	25	37	25	8	8	28	359
COLORADO	2	8	2	4	-	2	-	2	2	1	-	1	24
FLORIDA	1	1	-	-	1	-	-	-	-	-	-	-	3
GEORGIA	6	13	18	11	10	3	-	-	-	-	-	1	62
ILLINOIS	84	54	51	32	42	66	63	72	118	113	124	159	978
INDIANA	70	51	62	42	41	52	67	46	131	118	131	131	942
IOWA	44	29	13	12	27	61	85	82	124	93	83	79	732
KANSAS	37	30	46	26	40	32	29	32	43	43	33	56	447
KENTUCKY	39	54	125	111	61	34	26	24	36	22	23	38	593
MARYLAND	-	-	-	-	-	-	1	-	-	-	-	-	1
MINNESOTA	13	3	4	-	1	11	19	27	36	23	27	23	187
MISSISSIPPI	5	16	19	10	5	4	4	-	-	-	7	5	75
MISSOURI	128	98	103	95	124	152	138	148	178	146	148	192	1,650
NEBRASKA	87	62	59	41	66	85	72	97	122	100	89	105	985
NORTH CAROLINA	8	13	19	11	6	3	-	-	-	-	-	3	63
NORTH DAKOTA	1	-	-	-	-	-	3	7	26	15	19	5	76
OHIO	19	8	2	1	6	22	20	24	57	50	70	56	335
OKLAHOMA	111	125	117	66	69	55	38	40	37	19	13	38	728
PENNSYLVANIA	1	-	1	1	-	-	-	-	1	-	-	4	8
SOUTH CAROLINA	5	19	17	5	2	2	2	1	-	-	-	6	59
SOUTH DAKOTA	24	16	7	1	5	10	14	32	54	48	46	43	300
TENNESSEE	51	82	179	205	116	53	31	35	21	6	37	41	857
TEXAS	46	52	47	25	26	12	5	5	4	-	3	8	233
VIRGINIA	6	6	20	15	11	5	3	1	-	1	19	9	96
WISCONSIN	-	1	1	-	7	17	24	26	31	38	28	19	192
WYOMING	-	-	-	-	-	-	-	1	-	-	-	-	1
TOTAL - 1931	354	820	1,004	773	713	723	677	743	1,048	844	911	1,052	10,152
1930	841	735	813	954	772	705	781	849	1,085	1,014	986	1,142	10,667

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Bureau of Agricultural Economics
Tel. Canal 6-2100

UNITED STATES DEPARTMENT OF AGRICULTURE

Market News Service
641 Washington St., Room 418-New York

FREIGHT UNLOADS OF LIVE POULTRY BY STATES AT NEW YORK DURING 1932 (CARS)

STATES	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	TOTAL
ALABAMA	13	23	42	21	21	10	6	4	-	-	6	5	151
ARKANSAS	28	38	47	42	33	16	22	26	8	6	7	17	290
COLORADO	1	3	6	2	-	2	-	1	1	-	-	1	17
FLORIDA	1	-	2	1	-	-	-	-	-	-	-	-	4
GEORGIA	7	10	4	6	4	3	1	-	-	-	-	-	35
ILLINOIS	73	51	41	30	45	44	28	50	88	113	146	142	851
INDIANA	67	55	46	52	40	51	57	101	119	142	166	155	1,051
IOWA	47	22	19	21	21	74	77	64	67	75	59	52	598
KANSAS	35	61	40	37	21	27	25	25	38	36	42	43	430
KENTUCKY	34	39	64	77	63	39	33	47	50	57	43	50	596
LOUISIANA	1	1	-	2	3	3	1	-	-	-	-	1	12
MICHIGAN	-	-	-	-	-	-	-	-	-	-	1	1	2
MINNESOTA	7	5	1	-	-	4	7	2	7	11	11	3	58
MISSISSIPPI	4	11	16	11	7	2	-	-	-	-	3	6	60
MISSOURI	107	111	142	146	151	162	151	194	187	182	152	154	1,839
NEBRASKA	54	49	58	58	69	71	66	64	94	78	78	63	802
NORTH CAROLINA	10	15	13	7	2	1	-	-	-	-	1	1	50
NORTH DAKOTA	-	-	-	-	-	-	-	2	19	19	8	-	48
OHIO	23	3	1	1	5	19	16	40	63	81	97	112	461
OKLAHOMA	85	100	110	75	27	17	8	1	-	2	5	15	445
PENNSYLVANIA	-	1	-	1	-	-	-	-	-	1	-	1	4
SOUTH CAROLINA	10	19	9	3	2	-	-	1	-	-	-	-	44
SOUTH DAKOTA	24	8	4	4	33	17	22	35	37	31	49	37	271
TENNESSEE	47	60	141	173	103	50	30	20	3	4	30	29	690
TEXAS	29	46	43	31	15	9	2	-	-	-	6	2	183
VIRGINIA	4	8	9	7	4	1	-	1	-	-	20	12	66
WISCONSIN	4	2	2	-	1	10	7	9	13	11	7	2	68
TOTAL - 1932	715	741	860	808	640	632	559	687	794	849	937	904	9,126
1931	854	820	1,004	773	713	713	677	743	1,048	844	911	1,052	10,152

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UNITED STATES DEPARTMENT OF AGRICULTURE

Bureau of Agricultural Economics
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Market News Service
641 Washington St., Room 416--New York

FREIGHT UNLOADS OF LIVE POULTRY BY STATES AT NEW YORK DURING 1933 (CARS)

STATES	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	TOTAL
ALABAMA	14	13	29	25	9	4	-	-	-	-	3	2	99
ARKANSAS	29	31	42	31	23	21	21	23	10	4	5	8	248
COLORADO	1	-	1	-	-	-	-	-	-	-	-	-	2
GEORGIA	-	1	3	2	2	-	-	-	-	-	1	-	9
ILLINOIS	76	51	38	37	46	51	53	116	15	194	224	191	1,234
INDIANA	69	49	40	30	43	60	53	123	15	150	176	144	1,092
IOWA	39	13	6	2	6	22	28	46	6	63	62	82	432
KANSAS	44	45	16	22	10	13	6	16	1	16	27	21	254
KENTUCKY	55	63	111	134	105	59	38	43	31	24	31	38	732
LOUISIANA	1	-	1	1	-	-	-	-	-	-	-	-	3
MICHIGAN	-	-	-	-	-	-	-	-	-	-	1	2	3
MINNESOTA	-	-	-	-	-	-	-	2	8	6	7	6	29
MISSISSIPPI	4	6	13	6	8	1	1	-	-	-	5	2	46
MISSOURI	130	121	119	98	99	140	137	161	150	172	145	139	1,611
NEBRASKA	44	28	21	27	20	28	24	40	44	50	48	58	432
NORTH CAROLINA	5	16	6	5	1	-	-	-	-	1	1	-	35
NORTH DAKOTA	-	-	-	-	1	-	-	-	2	11	8	-	22
OHIO	40	20	12	16	16	32	24	49	61	57	73	62	462
OKLAHOMA	54	55	51	33	20	6	3	5	4	2	4	11	248
PENNSYLVANIA	-	-	-	-	-	-	-	-	-	-	1	-	1
SOUTH CAROLINA	3	19	2	-	-	-	-	-	-	-	-	-	24
SOUTH DAKOTA	20	7	5	3	3	5	5	12	26	32	27	12	157
TENNESSEE	50	76	138	238	139	67	25	16	-	-	37	19	805
TEXAS	30	31	28	20	7	4	1	1	-	-	-	3	125
VIRGINIA	-	3	3	4	1	2	-	-	-	-	18	3	34
W. VIRGINIA	-	-	-	-	1	-	-	-	-	-	-	-	1
WISCONSIN	1	-	-	-	-	1	3	2	3	-	-	-	10
TOTAL - 1933	709	648	635	734	550	516	422	655	732	782	904	803	8,150
1932	715	741	860	808	640	632	559	687	794	849	937	904	9,126

UNITED STATES DEPARTMENT OF AGRICULTURE
BUREAU OF AGRICULTURAL ECONOMICS
MARKET NEWS SERVICE

TELEPHONE
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641 WASHINGTON ST.
ROOM 418-NEW YORK

MONTHLY LIVE POULTRY MARKET REPORT

SEPTEMBER - 1934

VOL. VIII No. 9 — NEW YORK — OCTOBER 10, 1934

RECEIPTS OF LIVE POULTRY AT NEW YORK

ORIGIN	FREIGHT RECEIPTS No. OF CARS SEPT.	FREIGHT RECEIPTS No. OF CARS SINCE JAN 1ST	EXPRESS RECEIPTS No. OF POUNDS SEPT.	EXPRESS RECEIPTS No. OF POUNDS SINCE JAN 1ST	TRUCK RECEIPTS No. OF POUNDS SEPT.	TRUCK RECEIPTS No. OF POUNDS SINCE JAN 1ST
ALA.	-	32	-	-	-	-
ARK.	10	265	59	59	-	-
CONN.	-	-	324	2,938	347,100	2,492,820
DEL.	-	-	2,772	8,565	221,160	7,620,180
FLA.	-	-	-	57	-	-
GA.	-	-	-	88	-	-
ILL.	143	751	-	4,256	16,740	330,360
IND.	130	647	1,890	2,206	17,640	23,520
IA.	46	302	1,200	2,435	-	-
KANS.	27	170	-	792	-	-
KY.	8	493	9,114	142,447	-	11,400
LA.	-	-	-	-	-	5,760
ME.	-	-	482	14,236	55,980	325,080
MD.	-	2	1,088	17,648	113,880	1,565,760
MASS.	-	-	8,010	197,145	925,440	4,849,080
MICH.	-	-	192	265	-	-
MINN.	3	17	330	2,095	-	-
MISS.	-	26	-	829	-	-
MO.	175	1,288	-	26	-	-
NEBR.	62	413	-	16	-	-
N.H.	-	-	5,486	29,992	659,280	3,027,660
N.J.	-	-	486	17,656	839,160	1,790,580
N.Y.	-	-	71,553	466,624	1,395,960	5,775,900
N.C.	-	9	155	3,280	-	174,780
N.DAK.	2	2	25	164	-	-
OHIO	54	182	-	1,643	16,560	19,320
OKLA.	4	303	-	-	-	-
PA.	-	-	11,087	59,244	687,660	3,202,560
R.I.	-	-	178	6,315	302,460	1,710,180
S.C.	-	7	-	1,666	-	24,120
S.DAK.	20	67	-	20	-	11,760
TENN.	-	554	-	2,925	5,760	616,320
TEX.	1	70	-	-	-	-
VT.	-	-	9,933	46,011	-	6,180
VA.	-	-	29,617	295,282	51,900	714,000
WASH.	-	-	-	2,694	-	-
WIS.	2	2	-	10	-	-
WYO.	-	1	-	-	-	-
D.C.	-	-	64	5,692	-	-
TOTAL			154,045	1,335,521	5,656,680	34,297,320
CAR EQUIV.	687	5,603	8½	74½	314½	1,905½

NOTE: THE CAR OF LIVE POULTRY BY FREIGHT WHICH HAS BEEN LISTED UNDER CALIF. SHOULD HAVE BEEN INCLUDED IN ARK. THE ABOVE ARK. FIGURES ARE CORRECT.

SUMMARY OF RECEIPTS IN CARLOTS BY FREIGHT, EXPRESS AND TRUCK*

MONTHS	1934 FREIGHT	1934 EXPRESS	1934 TRUCK	1934 TOTAL	MONTHS	1933 FREIGHT	1933 EXPRESS	1933 TRUCK	1933 TOTAL
JAN.	772	6¼	93¾	872	JAN.	709	9¼	113¾	832¼
FEB.	624	7½	74⅓	706	FEB.	648	12½	134½	794⅔
MAR.	730	10¼	167	907¾	MAR.	685	10¼	177½	872⅔
APR.	596	7½	170½	773¾	APR.	734	7	188	929
MAY	610	6¼	298¾	915	MAY	560	6¾	270¾	837½
JUNE	495	8½	307½	810⅔	JUNE	516	9	375	900
JULY	490	8½	230¼	728¾	JULY	422	9	291¾	722¾
AUG.	539	10	250	859	AUG.	655	8¾	211¼	875
SEPT.	687	8½	314¼	1,009¾	SEPT.	732	8½	185	925½
TOTAL	5,603	74½	1,905½	7,582¾	TOTAL	5,661	81½	1,947	7,689½

*TRUCK AND EXPRESS RECEIPTS CONVERTED TO CARLOTS ON BASIS OF 18,000 LBS PER CAR.

MAKE-UP OF FREIGHT CARS UNLOADED

MONTHS	FOWLS %	CHICKENS %	BROILERS %	COCKS %	CAPONS %	DUCKS %	GEESE %	TURKEYS %	MISC. %
JAN.	82.33	12.33	0.03	1.46	0.69	1.11	1.08	0.75	0.22
FEB.	89.22	6.62	0.02	1.56	0.55	0.62	0.57	0.62	0.22
MAR.	93.21	3.52	0.03	1.60	0.27	0.42	0.33	0.49	0.13
APR.	93.91	2.06	0.14	2.52	0.06	0.51	0.22	0.33	0.25
MAY	94.13	0.38	0.56	3.45	0.01	0.62	0.16	0.56	0.13
JUNE	91.14	0.84	2.94	3.89	0.00	0.57	0.10	0.44	0.08
JULY	78.14	10.80	7.91	2.17	0.00	0.58	0.10	0.34	0.06
AUG.	67.57	24.78	4.04	2.31	0.00	0.60	0.21	0.13	0.16
SEPT.	52.15	44.03	0.20	1.48	0.00	1.34	0.21	0.35	0.24
SINCE JAN 1ST	82.16	12.22	1.46	2.19	0.20	0.75	0.36	0.46	0.17

L. F. CHAMPLIN
LOCAL REPRESENTATIVE
OCT. 10, 1934

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UNITED STATES DEPARTMENT OF AGRICULTURE

Bureau of Agricultural Economics
Tel. Barclay 5240

Market News Service
102 Warren St., Room 603-New York.

RECEIPTS OF LIVE POULTRY BY STATES AT NEW YORK DURING 1926(POUNDS)

BY EXPRESS

STATES	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	TOTAL
CONNECTICUT	675	1,376	24,962	35,530	46,371	54,685	38,933	18,554	11,774	12,815	4,841	7,466	259,972
DELAWARE	735	646	1,079	807	3,668	1,215	1,782	1,383	578	-	824	238	12,935
FLORIDA	-	-	-	345	-	-	-	-	-	-	-	30	375
GEORGIA	80	60	560	138	-	-	75	18	-	40	5,147	3,043	9,161
ILLINOIS	13,010	1,605	666	6,266	408	-	-	80	-	-	1,493	871	24,399
INDIANA	4,276	2,951	4,956	588	1,818	206	-	530	-	225	275	2,668	18,093
IOWA	1,036	-	-	-	-	70	-	-	308	-	336	-	1,750
KENTUCKY	4,610	2,634	1,795	-	-	77	30	-	-	1,442	8,334	4,091	23,013
MAINE	11,597	9,432	36,573	32,456	57,162	96,274	83,161	57,782	25,431	24,861	19,430	11,468	465,627
MARYLAND	57,894	29,646	26,017	16,808	28,028	55,480	40,716	51,114	13,682	19,561	51,755	48,637	439,358
MASSACHUSETTS	16,377	12,814	70,013	147,524	188,386	176,188	144,318	52,637	23,070	19,831	8,244	21,726	881,128
MICHIGAN	-	-	-	400	-	400	-	55	-	496	-	-	1,351
MISSOURI	30	-	-	-	-	-	-	5,932	-	460	123	245	6,790
NEW HAMPSHIRE	55,085	117,203	241,659	279,075	290,094	429,643	481,794	170,663	82,587	51,352	59,210	92,359	2,350,724
NEW JERSEY	5,130	4,120	6,338	15,693	25,866	44,336	22,639	13,143	17,511	13,543	11,343	9,620	189,282
NEW YORK	72,279	51,087	84,326	42,722	70,258	222,253	367,265	391,618	541,771	386,249	247,450	250,551	2,727,689
NORTH CAROLINA	19,541	20,611	2,429	7,589	7,236	185	-	66	187	600	20,958	6,214	85,866
OHIO	20,440	1,540	34,127	9,720	2,629	2,016	1,850	2,114	1,131	1,827	5,494	18,762	101,650
PENNSYLVANIA	26,024	18,859	26,921	15,336	45,197	75,999	82,209	61,603	70,570	57,737	50,670	58,767	589,882
RHODE ISLAND	315	3,489	566	2,990	12,556	18,572	3,569	2,302	1,995	875	258	1,346	48,833
SOUTH CAROLINA	-	-	264	-	-	-	-	272	155	202	160	676	1,729
TENNESSEE	1,299	2,251	4,391	-	-	-	409	120	-	-	2,749	8,905	20,124
VERMONT	8,905	9,533	25,353	25,031	25,965	45,261	53,535	31,341	32,941	28,914	21,507	11,868	320,154
VIRGINIA	104,149	34,589	33,681	40,094	29,238	3,710	15,898	14,360	35,102	30,012	67,984	73,109	481,326
WEST VIRGINIA	633	296	2,027	269	1,527	383	65	62	327	122	937	392	7,240
WISCONSIN	-	105	-	-	-	485	-	-	-	-	175	487	1,252
DIST. OF COLUMBIA	3,222	350	-	-	7,563	-	-	-	-	2,798	3,398	80	17,411
MISCELLANEOUS	260	-	125	44	-	-	-	195	-	1,659	70	208	2,561
TOTAL	427,462	324,997	628,218	679,415	846,029	1,227,438	1,338,228	875,944	899,120	655,041	593,165	634,027	9,089,675

BY FREIGHT(CARS)

TOTAL	797	511	935	619	751	833	814	314	1,105	1,024	1,199	991	9,893

Government's Exhibit 13 (Continued)

UNITED STATES DEPARTMENT OF AGRICULTURE

Bureau of Agricultural Economics
Tel. Barclay 5240

Market News Service
53 Park Place, Room 902-New York

RECEIPTS OF LIVE POULTRY BY STATES AT NEW YORK DURING 1927 (POUNDS)
BY EXPRESS

STATES	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	TOTAL
CONNECTICUT	1,792	8,322	18,579	8,089	23,532	63,965	26,050	14,710	11,920	5,657	8,416	8,885	199,917
DELAWARE	933	691	2,638	3,320	3,391	3,285	1,973	1,002	471	988	1,292	2,862	22,846
GEORGIA	-	-	225	-	-	-	37	65	559	118	17,259	28,172	46,435
ILLINOIS	565	183	429	3,338	113	205	37	-	895	-	230	454	6,449
INDIANA	10,002	880	1,118	1,519	984	2,111	2,540	-	-	-	57	1,612	20,823
IOWA	279	-	-	58	-	-	608	-	-	-	260	-	1,205
KENTUCKY	-	500	1,628	250	-	-	-	-	272	-	489	10,793	13,932
MAINE	12,297	20,879	41,212	43,918	64,177	135,048	110,761	71,936	55,865	36,451	27,264	16,961	636,769
MARYLAND	138,261	15,775	37,744	66,325	84,666	123,425	60,789	69,993	224,633	42,313	103,968	88,334	1,056,226
MASSACHUSETTS	7,706	33,933	57,495	102,347	166,575	230,856	203,936	73,086	42,938	23,467	24,092	14,228	980,659
MICHIGAN	-	57	366	330	555	-	560	-	47	-	45	-	1,960
MINNESOTA	165	-	-	-	-	7,841	-	-	-	-	112	202	8,320
MISSISSIPPI	-	427	1,848	-	-	789	-	-	-	-	-	-	3,064
MISSOURI	150	-	-	300	-	-	-	-	200	1,089	3,293	150	5,182
NEW HAMPSHIRE	86,983	182,662	321,667	293,840	346,179	578,682	460,372	313,883	141,261	96,757	43,828	83,569	2,949,683
NEW JERSEY	8,350	10,657	12,580	16,642	36,419	41,722	29,883	20,855	21,923	21,262	17,298	14,493	252,084
NEW YORK	229,069	275,856	372,896	441,487	263,503	530,605	568,074	1,265,477	866,773	826,564	394,405	343,890	6,378,021
NORTH CAROLINA	31,617	3,922	3,808	33,263	2,870	840	2,218	215	2,076	937	44,168	15,987	142,121
OHIO	191,963	1,007	9,612	8,638	729	1,240	5,284	192	17,050	4,020	17,398	11,302	178,440
PENNSYLVANIA	33,484	15,550	24,437	24,161	128,737	101,827	112,530	95,276	78,484	55,382	56,146	50,948	776,982
RHODE ISLAND	1,594	1,381	6,617	9,031	6,332	13,199	9,717	4,820	6,147	3,397	3,550	1,496	67,281
SOUTH CAROLINA	-	130	350	-	11	20	149	2,389	415	117	1,577	5,330	10,488
TENNESSEE	1,245	2,639	675	1,000	80	-	1,004	462	421	-	1,714	2,132	11,622
VERMONT	8,643	15,402	23,111	12,766	20,438	66,043	80,835	80,226	56,440	41,201	11,049	12,842	428,996
VIRGINIA	56,645	19,977	38,987	120,745	73,139	63,636	20,065	11,797	15,131	7,496	76,302	100,737	604,909
WASHINGTON	-	-	-	9,482	-	-	-	-	-	-	-	-	9,482
WEST VIRGINIA	2,929	639	138	141	672	378	40	317	-	323	2,704	1,939	10,420
DISTRICT OF COLUMBIA	34,665	750	851	6,041	7,961	1,152	3,592	1,856	17,743	483	20,139	15,729	111,642
MISCELLANEOUS	50	1,153	110	140	-	-	230	188	-	-	192	550	2,613
TOTAL 1927 -	769,592	613,822	979,123	1,207,191	1,231,063	1,966,521	1,701,284	2,026,745	1,551,664	1,168,042	877,907	833,597	14,938,571
1926 -	427,462	324,997	623,218	679,415	846,020	1,227,436	1,338,228	875,944	859,120	655,641	593,165	674,027	9,080,675

Government's Exhibit 13 (Continued)

Bureau of Agricultural Economics
Tel. Barclay 5240

UNITED STATES DEPARTMENT OF AGRICULTURE

Market News Service
53 Park Place-Room 902-New York

RECEIPTS OF LIVE POULTRY BY STATES AT NEW YORK DURING 1928 (POUNDS)
BY EXPRESS

STATES	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	TOTAL
ALABAMA	2,384	-	-	-	-	-	-	-	145	60	185	87	2,861
CONNECTICUT	7,857	7,953	8,916	8,114	23,669	34,327	21,589	15,601	12,987	7,007	3,364	4,490	155,914
DELAWARE	4,026	11,999	22,245	10,587	27,922	25,220	29,513	11,524	20,910	10,645	9,307	20,255	204,153
GEORGIA	-	-	-	-	1,207	-	50	30	-	459	4,037	180	5,363
ILLINOIS	1,827	333	452	-	1,014	116	-	-	-	106	1,028	239	5,115
INDIANA	2,271	437	-	33	360	357	62	-	710	7,166	155	50	11,601
IOWA	59	-	-	300	-	-	-	-	140	1,749	55	7	2,310
KANSAS	-	-	-	-	-	-	-	-	-	-	-	1,273	1,273
KENTUCKY	11,695	500	2,271	76	-	21,695	-	-	-	-	1,432	2,540	40,209
MAINE	14,284	17,538	30,544	42,275	74,099	149,720	144,166	137,598	82,395	71,581	31,917	26,301	822,418
MARYLAND	116,907	33,218	70,958	216,731	168,231	230,942	157,325	166,932	170,880	108,978	94,512	141,923	1,677,525
MASSACHUSETTS	11,769	8,894	37,285	116,767	282,522	522,117	438,876	228,495	131,809	89,990	44,353	21,414	1,934,291
MICHIGAN	-	-	-	-	-	3,091	220	-	23,210	-	25	-	26,546
MINNESOTA	-	-	-	324	-	-	-	-	-	120	60	220	724
MISSISSIPPI	-	-	-	-	-	-	-	-	-	867	-	2,067	2,934
MISSOURI	-	-	498	-	642	308	444	16,932	5,834	1,325	10,365	4,043	41,391
NEW HAMPSHIRE	43,584	82,431	180,065	238,137	235,220	522,092	482,933	284,454	129,779	95,416	41,629	30,942	2,366,682
NEW JERSEY	12,404	36,113	8,741	9,729	16,063	28,326	19,304	11,318	13,643	11,766	6,955	9,942	184,206
NEW YORK	215,506	150,974	240,069	431,711	380,843	471,029	541,017	592,593	764,174	751,716	414,203	168,158	5,121,993
NORTH CAROLINA	29,289	2,311	490	5,995	1,683	464	35	4,184	1,724	2,461	14,697	7,868	71,201
OHIO	10,610	3,258	8,240	4,480	1,332	2,100	128	1,522	47	2,119	1,854	2,788	38,478
OKLAHOMA	998	-	-	-	85	-	87	-	-	-	-	-	1,170
PENNSYLVANIA	35,898	24,341	22,519	22,739	45,806	75,103	95,097	138,905	98,183	61,238	54,333	36,702	710,864
RHODE ISLAND	1,130	421	3,066	12,937	27,972	37,864	12,550	14,994	2,532	5,598	1,410	3,939	124,413
SOUTH CAROLINA	1,171	1,913	432	1,702	3,829	330	788	398	15	489	1,458	674	13,199
SOUTH DAKOTA	168	60	115	271	-	-	-	-	-	-	-	-	614
TENNESSEE	-	3,726	521	627	79	-	-	-	251	66	1,413	391	7,074
VERMONT	7,857	17,776	19,595	23,957	41,673	77,116	77,199	93,835	114,447	93,985	60,758	30,023	658,221
VIRGINIA	77,049	80,226	73,559	105,365	83,193	33,637	24,830	16,991	29,088	30,284	38,224	35,730	628,176
WASHINGTON	-	-	-	144	-	-	-	-	-	-	-	-	144
WEST VIRGINIA	2,973	6,210	1,409	-	244	391	-	52	70	775	2,836	8,074	23,034
DISTRICT OF COLUMBIA	12,996	4,247	1,505	12,336	4,676	-	524	20,366	3,330	2,951	11,259	25,332	99,522
MISCELLANEOUS	110	50	-	20	125	-	-	-	-	-	263	456	1,024
TOTAL 1928	624,823	494,957	733,495	1,265,356	1,422,491	2,236,345	2,046,637	1,756,714	1,607,303	1,358,927	852,297	585,102	14,985,453
1927	769,592	613,822	979,123	1,207,191	1,231,083	1,966,521	1,701,284	2,028,745	1,561,664	1,168,042	877,907	833,597	14,938,571

Government's Exhibit 13 (Continued)

UNITED STATES DEPARTMENT OF AGRICULTURE

Bureau of Agricultural Economics
Telephone - Barclay 5240

Market News Service

RECEIPTS OF LIVE POULTRY BY STATES AT NEW YORK DURING 1929 (POUNDS)

BY EXPRESS

STATES	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	TOTAL
ALABAMA	323	-	-	1,404	-	-	60	64	-	-	88	-	1,939
CONNECTICUT	8,793	3,214	3,904	6,293	15,104	28,767	14,301	5,964	3,105	5,137	2,440	2,422	99,474
DELAWARE	25,561	14,397	17,571	10,188	11,081	16,080	9,528	2,536	11,053	4,711	3,377	6,437	132,520
GEORGIA	-	-	-	-	55	-	155	-	-	-	428	267	905
DIST. OF COLUMBIA	43,898	44,093	6,890	-	-	1,134	4,152	3,332	3,141	15,705	25,039	19,564	166,998
ILLINOIS	464	-	1,280	-	-	777	-	-	-	-	-	305	2,826
INDIANA	4,827	156	537	-	-	235	-	-	-	-	354	32	6,131
IOWA	4,121	680	-	-	-	-	-	-	-	-	41	-	4,842
KENTUCKY	-	-	-	-	-	70	-	-	43	496	-	-	609
MAINE	18,149	19,064	48,676	47,706	86,004	163,724	123,480	83,983	28,958	38,597	23,050	15,706	747,097
MARYLAND	222,377	101,612	140,597	36,460	61,345	107,245	163,229	84,259	40,282	46,140	73,186	73,414	1,150,146
MASSACHUSETTS	21,850	19,621	94,198	138,991	233,535	269,826	147,370	94,231	43,306	68,129	26,221	21,474	1,177,752
MICHIGAN	208	-	-	-	-	505	-	15,620	378	112	-	-	16,823
MINNESOTA	295	327	-	-	-	-	-	-	-	371	-	-	1,293
MISSOURI	10,265	1,926	927	115	-	-	-	45	2,326	763	54	80	16,501
NEBRASKA	-	-	2,360	-	-	-	-	-	-	-	-	-	2,360
NEW HAMPSHIRE	38,120	90,591	233,663	217,018	288,989	361,907	362,786	218,322	78,317	121,567	34,570	34,946	2,080,796
NEW JERSEY	8,416	12,257	7,751	5,272	13,692	11,568	8,612	8,808	12,688	5,648	8,964	8,958	112,634
NEW YORK	152,226	93,857	82,367	62,354	201,493	321,725	442,091	407,677	395,030	496,039	289,006	202,532	3,146,547
NORTH CAROLINA	7,570	5,760	25,151	1,959	4,601	373	652	329	8,535	253	4,208	8,382	67,773
NORTH DAKOTA	-	-	-	-	-	-	-	-	-	50	85	83	218
OHIO	17,040	962	1,856	505	158	266	2,509	735	1,938	978	519	989	28,455
PENNSYLVANIA	31,346	17,265	29,007	23,397	50,351	70,095	69,967	68,500	50,968	62,591	40,975	43,751	558,213
RHODE ISLAND	10,613	3,722	12,485	15,006	22,555	14,078	15,200	8,292	4,559	5,278	3,196	1,817	116,801
SOUTH CAROLINA	2,432	516	330	6,492	645	27	126	1,711	871	264	228	1,580	15,222
TENNESSEE	1,834	934	212	165	-	-	138	819	1,104	487	-	-	5,693
TEXAS	-	-	-	-	-	-	-	-	-	427	107	-	534
VERMONT	17,782	15,109	33,115	22,939	47,227	180,727	108,159	124,779	62,570	76,796	36,781	14,420	740,404
VIRGINIA	56,730	42,370	61,800	26,262	22,376	10,528	19,548	14,469	9,762	15,964	35,386	40,905	356,100
WEST VIRGINIA	5,920	3,267	484	-	-	-	957	986	405	2,056	4,508	12,846	31,429
MISCELLANEOUS	222	40	-	161	-	471	-	-	147	110	668	47	1,866
TOTAL - 1929	711,382	491,040	805,151	622,687	1,959,211	1,560,128	1,543,020	1,145,511	759,536	968,699	613,479	511,057	10,790,901
TOTAL - 1928	624,823	494,957	733,495	1,265,356	1,422,491	2,236,345	2,046,637	1,756,714	1,607,303	1,358,927	852,297	586,108	14,985,453

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Government's Exhibit 13 (Continued)

UNITED STATES DEPARTMENT OF AGRICULTURE

Bureau of Agricultural Economics
Telephone - Barclay 7320

Market News Service
53 Park Place-Room 902-New York

RECEIPTS OF LIVE POULTRY BY STATES AT NEW YORK DURING 1929 (POUNDS)
BY TRUCK

STATES	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	TOTAL
CONNECTICUT	29,520	13,660	47,100	54,060	198,973	246,230	153,960	57,540	36,900	58,260	53,520	37,500	992,273
DELAWARE	154,838	296,780	435,600	257,220	495,900	399,000	235,620	67,080	51,800	46,860	30,000	193,060	2,664,538
MAINE	-	-	-	3,240	4,620	30,960	67,500	15,780	27,420	32,700	7,500	8,400	198,120
MARYLAND	39,540	42,280	139,050	137,280	200,220	184,520	150,500	117,780	60,120	69,600	93,300	85,800	1,320,670
MASSACHUSETTS	7,320	7,800	44,280	38,400	261,780	645,180	433,680	178,020	46,260	149,586	14,520	7,920	1,834,766
NEW HAMPSHIRE	-	-	3,240	3,780	9,840	54,900	88,920	88,920	8,820	89,100	10,800	6,540	364,920
NEW JERSEY	311,902	84,720	90,180	97,920	283,860	253,080	174,720	77,040	59,140	70,720	52,920	241,900	1,797,822
NEW YORK	460,342	469,873	440,390	445,313	299,267	243,062	294,671	209,464	305,633	697,736	308,929	301,167	4,475,869
PENNSYLVANIA	133,440	65,040	92,920	52,680	67,220	212,780	239,700	75,180	53,820	60,900	65,400	41,520	1,160,400
RHODE ISLAND	-	-	130	7,440	34,728	137,700	93,000	25,200	9,960	12,840	2,400	19,860	343,358
VIRGINIA	24,720	5,100	39,180	5,880	17,580	18,000	9,180	19,620	-	-	1,358	14,100	154,718
TOTAL -1929	1,161,622	1,010,853	1,332,020	1,101,213	1,872,688	2,426,282	1,951,511	931,644	659,893	1,238,282	640,647	957,767	15,334,464

Government's Exhibit 13 (Continued)

UNITED STATES DEPARTMENT OF AGRICULTURE

Bureau of Agricultural Economics
Tel. Cortland 7-9600

RECEIPTS OF LIVE POULTRY BY STATES AT NEW YORK DURING 1930 (POUNDS)
BY EXPRESS

Market News Service
80 Centre Street, Room 810-New York

STATES	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	TOTAL
ALABAMA	31	-	-	-	-	-	-	-	-	-	238	38	307
ARKANSAS	-	-	-	-	-	-	1,390	-	-	-	-	-	1,390
CONNECTICUT	2,430	1,471	2,153	4,555	13,737	9,308	8,210	5,665	3,486	1,803	585	3,391	56,794
DELAWARE	4,216	594	2,213	903	2,220	1,109	967	433	142	435	2,096	4,452	19,780
DIST.OF COLUMBIA	46,710	7,640	1,711	2,292	565	8,114	1,963	1,513	9,105	17,377	5,252	10,269	112,511
GEORGIA	-	29	-	200	-	-	38	17	471	-	93	16	864
FLORIDA	-	-	-	-	-	182	-	-	-	-	-	-	182
ILLINOIS	-	724	1,595	465	648	-	200	11	4,762	2,443	2,013	387	13,248
INDIANA	1,040	195	-	2,017	43	1,010	62	980	337	330	133	414	6,559
IOWA	-	775	126	-	-	1,589	-	-	-	-	35	2,778	5,303
KENTUCKY	1,096	90	-	84	-	-	77	-	33	400	1,177	1,078	4,035
MAINE	7,410	14,324	27,364	51,609	53,177	107,988	103,723	70,799	60,409	53,073	23,535	15,690	589,101
MARYLAND	47,983	8,400	11,816	14,214	9,168	10,319	3,703	1,076	15,899	9,702	6,932	13,552	152,864
MASSACHUSETTS	8,266	9,496	61,537	143,537	170,055	118,627	95,351	74,931	44,249	44,008	24,341	16,172	810,770
MICHIGAN	-	-	190	-	-	-	-	-	-	-	-	194	384
MINNESOTA	-	-	-	-	-	-	-	-	-	-	131	-	131
NEBRASKA	-	-	22	55	-	-	-	-	-	-	-	-	77
NEW HAMPSHIRE	21,389	32,287	111,495	241,043	202,112	226,669	236,104	120,177	77,220	69,656	37,509	30,166	1,455,827
NEW JERSEY	2,449	2,559	1,440	2,551	8,331	7,455	9,815	5,569	9,160	7,315	5,720	5,516	67,880
NEW YORK	126,944	68,657	103,390	118,684	232,917	340,179	512,578	307,046	402,441	308,659	156,776	102,831	2,781,652
NORTH CAROLINA	2,935	852	909	1,628	145	64	88	30	3,508	1,087	159	15,327	27,732
NORTH DAKOTA	-	-	-	-	-	-	-	-	-	-	105	118	223
OHIO	6,424	320	-	1,760	846	305	1,811	-	357	165	213	4,093	16,794
OKLAHOMA	-	-	-	-	-	-	-	-	-	232	-	48	280
PENNSYLVANIA	22,565	11,330	10,874	19,782	37,312	64,961	64,021	44,716	52,368	50,410	21,421	30,520	430,350
RHODE ISLAND	3,543	2,155	5,043	18,968	16,760	7,011	7,588	3,207	4,291	6,327	5,058	2,036	83,437
SOUTH CAROLINA	161	-	-	-	473	23	77	117	932	1,543	278	262	3,366
SOUTH DAKOTA	-	-	-	-	-	-	2,645	-	-	-	-	-	2,645
TENNESSEE	-	-	80	665	-	-	-	-	-	-	922	2,744	4,411
VERMONT	25,331	14,376	20,468	26,418	46,542	89,313	115,548	99,329	73,858	59,123	20,619	13,383	604,808
VIRGINIA	68,874	24,786	37,362	24,771	13,032	6,056	9,466	4,681	15,467	26,450	43,568	58,035	332,579
WEST VIRGINIA	4,514	2,220	1,187	212	1,387	821	-	218	200	1,274	3,628	6,606	22,769
WISCONSIN	-	-	-	-	-	-	-	-	-	170	73	48	291
MISCELLANEOUS	-	205	-	356	-	-	-	-	-	-	-	1,224	1,785
TOTAL - 1930	404,331	204,035	401,475	676,759	809,970	1,001,303	1,225,423	740,515	778,695	662,512	363,610	342,541	7,611,679
1929	711,382	491,040	805,151	622,667	1,059,211	1,560,128	1,543,020	1,145,511	759,536	968,699	613,479	511,057	10,790,901

Government's Exhibit 13 (Continued)

UNITED STATES DEPARTMENT OF AGRICULTURE

Bureau of Agricultural Economics
Tel. Cortland 7-9600

RECEIPTS OF LIVE POULTRY BY STATES AT NEW YORK DURING 1930 (POUNDS)
BY TRUCK

Market News Service
80 Centre Street, Room 210-New York

STATES	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	TOTAL
CONNECTICUT	42,240	19,500	72,240	104,360	268,400	268,880	292,520	143,220	123,900	76,440	63,720	40,020	1,509,440
DELAWARE	351,630	447,240	486,560	641,910	741,180	431,060	303,900	102,360	103,140	73,800	36,120	163,930	3,922,950
IOWA	-	-	-	-	-	-	-	-	-	8,340	-	-	8,340
MAINE	12,960	-	5,040	25,920	54,780	23,500	32,880	19,620	21,720	33,720	47,100	8,640	235,940
MARYLAND	154,350	146,040	249,480	419,580	348,769	336,180	378,560	288,120	193,020	176,280	152,640	165,180	3,006,289
MASSACHUSETTS	-	3,220	94,200	278,640	669,200	1,103,020	1,175,060	465,600	350,220	353,760	126,650	58,320	4,653,900
NEW HAMPSHIRE	-	-	15,840	98,640	107,120	203,860	322,420	138,580	211,513	197,940	61,320	6,360	1,413,593
NEW JERSEY	315,200	22,800	56,280	220,620	420,220	300,060	191,160	34,020	84,960	31,500	35,760	149,380	1,862,520
NEW YORK	356,990	217,768	253,056	718,510	253,833	391,036	609,119	252,661	713,391	936,758	331,260	233,140	5,267,522
OHIO	-	-	-	-	-	-	-	-	10,500	6,030	4,080	-	20,580
PENNSYLVANIA	68,100	37,260	33,540	98,040	173,460	283,140	335,340	171,340	177,720	93,280	104,940	67,940	1,645,900
RHODE ISLAND	24,540	2,640	22,330	34,930	159,300	147,600	202,440	83,220	69,780	79,820	38,700	28,740	894,140
VERMONT	-	-	-	1,500	-	-	-	-	-	-	-	-	1,500
VIRGINIA	29,700	-	34,500	102,920	42,720	26,340	-	26,640	42,120	45,960	5,220	25,740	331,860
WEST VIRGINIA	-	-	-	-	-	-	-	-	6,060	-	25,020	5,580	36,660
TOTAL - 1930	1,395,790	901,468	1,293,126	2,746,420	3,269,042	3,505,875	3,841,799	1,776,501	2,108,041	2,115,593	1,032,540	953,520	24,945,134
1929	1,161,822	1,010,833	1,356,020	1,101,813	1,672,666	2,426,282	1,951,511	931,640	659,895	1,256,282	640,347	967,767	15,334,404

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Government's Exhibit 13 (Continued)

Bureau of Agricultural Economics
Tel. Cortland 7-9500

UNITED STATES DEPARTMENT OF AGRICULTURE

Market News Service
80 Centre Street, Room 810-New York City

RECEIPTS OF LIVE POULTRY BY STATES AT NEW YORK DURING 1931 (POUNDS)
BY EXPRESS

STATES	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	TOTAL
ALABAMA	-	30	-	-	-	-	429	-	-	55	-	-	514
ARKANSAS	-	-	-	-	-	-	-	-	-	-	26	-	26
CONNECTICUT	1,931	1,935	3,272	5,329	9,547	8,553	8,167	7,286	2,304	3,314	1,416	3,305	59,359
DELAWARE	1,399	843	-	70	134	897	450	44	1,246	259	178	869	6,389
FLORIDA	-	-	-	-	-	-	-	-	-	-	-	201	201
GEORGIA	141	-	-	-	25	-	15	182	12	29	246	128	778
ILLINOIS	-	79	1,874	215	-	-	-	-	-	-	42	91	2,301
INDIANA	134	547	1,079	491	-	639	575	782	900	85	170	-	5,402
IOWA	3,282	1,039	894	-	165	-	-	-	-	-	55	38	5,473
KENTUCKY	-	-	97	172	-	-	-	-	62	2,335	1,234	3,953	7,853
LOUISIANA	-	-	150	-	-	-	-	-	-	-	-	35	185
MAINE	15,308	10,298	15,296	21,659	36,761	47,573	53,502	36,644	21,306	15,685	10,078	12,229	296,839
MARYLAND	15,345	9,937	7,874	11,149	8,374	4,391	7,254	4,577	4,923	4,795	4,053	3,886	86,558
MASSACHUSETTS	13,071	25,385	29,503	55,037	54,947	67,820	56,134	26,695	23,255	13,988	15,961	11,427	393,423
MICHIGAN	62	266	-	356	-	92	-	-	111	-	-	85	974
MISSOURI	135	-	-	-	-	1,240	-	90	237	-	-	304	2,006
NEBRASKA	-	9	-	-	-	-	-	-	-	-	-	-	9
NEW HAMPSHIRE	26,436	37,964	54,309	68,936	73,691	135,262	139,185	43,876	44,352	34,175	14,002	20,742	692,930
NEW JERSEY	5,037	1,772	3,058	4,153	4,529	8,526	5,957	3,812	7,057	5,239	3,304	6,032	59,476
NEW YORK	119,746	99,731	78,354	72,225	130,406	229,135	256,739	176,504	184,725	125,359	90,714	78,130	1,643,818
NORTH CAROLINA	5,848	3,718	231	20	35	406	139	382	151	15	978	1,784	13,707
NORTH DAKOTA	70	-	165	-	-	-	-	-	90	-	-	65	390
OHIO	-	187	215	2,760	40	-	109	-	439	1,055	117	927	5,849
PENNSYLVANIA	34,202	15,490	17,173	9,957	33,356	34,369	32,284	40,943	23,551	23,427	10,844	10,029	255,621
RHODE ISLAND	3,867	763	4,112	10,546	4,710	7,372	5,140	773	3,406	976	1,435	1,148	44,253
SOUTH CAROLINA	67	177	-	12	-	21	48	179	-	51	461	450	1,466
TENNESSEE	-	235	180	692	-	-	150	-	-	-	-	32	1,289
VERMONT	19,360	15,635	23,764	17,998	34,178	74,922	88,605	63,122	58,838	36,179	22,565	14,661	470,027
VIRGINIA	108,557	52,326	23,383	36,001	26,190	19,715	23,869	34,246	23,495	19,048	17,660	35,334	421,884
WEST VIRGINIA	2,897	5,052	326	2,171	1,274	-	918	138	715	365	552	264	14,672
WISCONSIN	-	-	-	-	-	-	-	-	-	-	82	70	152
DIST. OF COLUMBIA	24,801	13,[illegible]	-	-	-	1,172	72	-	454	1,192	12	2,186	43,627
MISCELLANEOUS	-	-	-	-	-	-	-	152	-	-	-	-	152
MINNESOTA	420	-	-	-	-	-	-	-	-	-	-	-	420
TOTAL - 1931	402,616	297,556	265,309	321,951	438,362	643,096	679,761	442,432	382,131	289,626	196,208	205,955	4,565,003
1930	404,831	204,035	401,475	676,769	809,970	1,001,303	1,225,423	740,515	776,695	662,512	363,610	342,541	7,611,679

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Government's Exhibit 13 (Continued)

Bureau of Agricultural Economics
Tel. Cortland 7-9600

UNITED STATES DEPARTMENT OF AGRICULTURE

Market News Service
80 Centre Street, Room 810-New York

RECEIPTS OF LIVE POULTRY BY STATES AT NEW YORK DURING 1931 (POUNDS)
BY TRUCK

STATES	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	TOTAL
CONNECTICUT	36,060	45,730	63,300	109,500	244,920	312,660	387,840	134,420	106,080	108,600	90,540	76,960	1,716,680
DELAWARE	198,240	319,880	658,300	791,480	637,000	476,660	548,820	218,520	175,880	72,540	185,020	460,020	5,042,360
GEORGIA	-	-	-	-	-	-	-	-	-	-	6,840	-	6,840
INDIANA	-	-	-	-	-	-	-	-	-	-	-	3,000	3,000
IOWA	-	-	-	-	-	-	5,940	7,800	1,980	-	-	-	15,720
MAINE	7,560	6,720	13,080	71,545	64,920	131,040	161,160	85,500	92,820	90,200	49,140	53,340	827,025
MARYLAND	253,560	245,020	176,880	230,608	231,300	266,700	297,780	134,760	82,140	116,820	118,860	191,300	2,345,728
MASSACHUSETTS	54,200	51,240	147,120	444,014	781,620	1,135,740	1,291,620	440,400	372,960	406,260	98,520	68,100	5,301,794
MISSOURI	-	-	-	-	-	-	-	-	-	-	8,940	-	8,940
NEW HAMPSHIRE	1,980	3,000	100,500	154,647	234,720	369,420	531,160	253,320	262,920	150,420	82,620	14,940	2,159,647
NEW JERSEY	108,210	57,220	50,540	152,697	230,240	241,960	173,640	64,540	116,590	74,820	114,340	305,920	1,710,717
NEW YORK	195,600	328,840	589,020	400,180	454,640	474,540	544,120	331,860	673,720	334,800	384,720	350,820	5,062,860
NORTH CAROLINA	-	-	-	-	-	-	-	3,180	-	-	7,020	8,340	18,540
OHIO	1,920	540	720	-	-	-	-	1,020	-	-	4,020	3,180	11,400
PENNSYLVANIA	75,420	69,780	59,230	45,081	83,460	108,900	188,500	98,230	116,760	84,120	84,480	94,500	1,108,561
RHODE ISLAND	28,860	6,730	10,440	57,079	196,500	188,820	256,220	134,100	75,360	91,800	55,740	34,860	1,136,559
TENNESSEE	-	-	-	-	-	-	-	-	-	-	-	1,020	1,020
VERMONT	-	-	-	420	300	420	7,980	45,060	60	420	-	-	54,660
VIRGINIA	33,960	22,140	70,020	49,317	16,860	16,920	11,040	-	23,940	960	54,360	37,500	337,517
WEST VIRGINIA	30,840	-	3,180	900	780	-	3,900	3,000	4,380	10,140	5,220	4,620	66,960
DISTRICT OF COLUMBIA	-	3,420	-	-	7,800	5,160	4,080	2,640	1,860	-	-	3,180	28,140
TOTAL - 1931	1,036,410	1,160,360	1,942,380	2,507,963	3,183,060	4,028,940	4,413,800	1,978,400	2,107,450	1,541,900	1,350,380	1,711,620	26,964,365
1930	1,395,790	901,466	1,293,136	2,745,420	3,259,042	3,508,676	3,841,399	1,776,501	2,108,044	2,118,598	1,032,540	953,520	24,945,134

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Government's Exhibit 13 (Continued)

Bureau of Agricultural Economics
Tel. Can-6-2100

UNITED STATES DEPARTMENT OF AGRICULTURE

RECEIPTS OF LIVE POULTRY BY STATES AT NEW YORK DURING 1932 (POUNDS)
BY EXPRESS

Market News Service
641 Washington St., Room 418-New York

STATES	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	TOTAL
ALABAMA	-	-	-	-	-	-	-	-	-	-	-	28	28
ARIZONA	-	-	-	-	-	-	-	-	-	179	-	-	179
CONNECTICUT	2,208	1,783	1,591	2,001	1,098	3,453	2,341	802	221	313	376	120	16,307
DELAWARE	1,196	432	75	-	-	270	4,506	1,338	413	-	65	234	8,529
FLORIDA	90	-	-	-	-	-	240	-	-	-	-	-	330
GEORGIA	-	-	159	17	-	-	94	172	-	-	74	35	551
ILLINOIS	-	-	640	427	494	1,229	404	404	188	256	65	18	4,125
INDIANA	402	-	1,240	790	301	-	247	-	105	143	356	39	3,623
IOWA	400	-	-	68	-	130	-	65	-	-	34	-	697
KENTUCKY	2,847	-	-	1,374	-	-	-	62	832	415	-	345	5,875
LOUISIANA	-	-	-	22	-	-	-	-	-	-	-	180	202
MAINE	8,227	17,839	21,465	15,858	16,837	21,279	14,523	13,620	5,903	8,921	7,567	1,293	153,332
MARYLAND	5,749	5,495	6,211	735	383	2,066	2,443	3,345	3,569	142	2,749	1,203	34,090
MASSACHUSETTS	12,891	16,666	14,256	12,946	19,042	34,397	21,641	13,171	11,246	9,754	2,566	799	169,375
MICHIGAN	-	-	-	-	-	-	95	-	-	68	360	-	523
MINNESOTA	400	-	-	-	-	-	-	-	-	-	-	-	400
MISSOURI	-	-	-	-	550	-	15	-	35	100	-	334	1,034
NEBRASKA	-	-	-	-	-	-	-	-	-	-	15	-	15
NEW HAMPSHIRE	17,153	27,798	30,820	32,449	37,638	44,383	40,698	24,470	11,144	8,548	9,102	6,329	290,532
NEW JERSEY	6,532	6,005	4,994	5,407	4,651	5,221	4,034	2,430	2,282	3,657	2,174	901	48,288
NEW YORK	56,295	63,287	46,978	38,028	64,586	92,948	83,645	73,248	66,613	47,790	53,548	34,064	721,030
NORTH CAROLINA	6,948	4,998	3,313	4,183	395	263	509	315	233	207	1,071	754	23,189
NORTH DAKOTA	-	-	-	-	-	-	-	-	-	-	-	206	206
OHIO	11,899	-	1,105	127	100	10	363	310	403	237	228	579	15,361
PENNSYLVANIA	18,194	9,606	11,548	19,612	8,640	14,013	10,995	7,540	8,014	9,393	8,688	6,762	133,205
RHODE ISLAND	1,394	1,973	3,095	609	466	2,082	1,973	670	1,351	4,013	163	1,057	18,846
SOUTH CAROLINA	133	69	-	33	46	17	147	194	135	201	613	1,088	2,676
SOUTH DAKOTA	-	-	90	-	-	-	-	-	365	-	-	-	455
TENNESSEE	-	-	-	-	-	-	-	-	-	260	932	5,267	6,459
VERMONT	15,325	11,014	14,402	18,255	14,561	50,121	33,495	33,494	19,926	18,557	34,593	4,461	268,204
VIRGINIA	60,183	62,526	17,587	19,875	17,796	33,654	33,310	51,247	49,755	45,294	75,317	127,907	594,451
WEST VIRGINIA	942	157	1,187	-	-	-	186	21	-	-	1,629	50	4,172
DISTRICT OF COLUMBIA	7,257	4,938	2,204	-	285	595	-	990	-	10	3,380	10,687	30,346
TEXAS	-	-	-	-	-	-	-	-	-	-	36	-	36
TOTAL - 1932	236,665	234,586	182,960	172,816	188,069	306,131	255,904	227,908	182,733	158,458	205,701	204,740	2,556,671
1931	402,616	297,556	265,309	321,951	438,362	643,096	679,761	442,432	382,131	289,626	196,208	208,955	4,568,003

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Government's Exhibit 13 (Continued)

Bureau of Agricultural Economics
Tel. Canal 6-2100

UNITED STATES DEPARTMENT OF AGRICULTURE

RECEIPTS OF LIVE POULTRY BY STATES AT NEW YORK DURING 1932 (POUNDS)
BY TRUCK

Market News Service
641 Washington St., Room 418-New York

STATES	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	TOTAL
CONNECTICUT	71,840	109,020	102,600	109,620	303,360	426,920	339,300	218,640	228,060	177,480	101,820	94,860	2,283,320
DELAWARE	617,400	708,900	948,900	771,480	883,080	1,100,860	876,180	609,360	342,420	181,620	349,980	808,260	8,198,440
ILLINOIS	-	-	-	-	-	-	-	-	-	4,318	-	17,280	21,598
INDIANA	17,280	15,300	-	-	-	-	660	7,080	-	3,420	-	52,140	95,880
IOWA	-	4,680	-	-	-	-	6,045	-	-	-	-	-	10,725
KENTUCKY	-	-	-	9,060	-	-	-	-	-	180	-	-	9,240
MAINE	10,860	39,600	75,480	27,060	86,040	181,020	146,460	164,220	152,760	126,900	64,200	9,360	1,083,960
MARYLAND	419,100	434,040	477,380	498,540	478,200	598,380	478,160	298,080	258,540	144,420	172,740	294,240	4,551,820
MASSACHUSETTS	82,380	74,160	270,780	268,560	920,400	1,241,100	1,023,180	565,400	621,540	511,740	281,280	80,760	5,941,280
MISSOURI	-	-	-	1,620	1,260	-	3,800	5,500	14,700	11,700	14,900	7,500	60,980
NEW HAMPSHIRE	23,040	37,980	162,700	203,880	320,400	617,220	637,260	481,440	572,460	360,180	197,160	42,660	3,656,380
NEW JERSEY	259,680	156,540	73,980	123,480	202,140	170,520	94,620	70,500	95,640	57,360	72,000	277,860	1,654,320
NEW YORK	255,300	297,060	510,040	517,760	532,980	586,320	437,280	333,540	459,850	334,980	208,440	261,600	4,735,150
NORTH CAROLINA	4,320	32,999	48,960	20,000	16,320	29,245	-	7,400	9,520	1,140	-	360	170,264
OHIO	-	-	-	-	-	-	4,800	-	-	3,120	28,500	23,640	60,060
OKLAHOMA	13,500	-	-	-	-	-	-	-	-	-	-	-	13,500
PENNSYLVANIA	121,080	91,380	99,660	122,280	148,920	169,360	224,400	206,880	163,200	150,780	171,600	175,320	1,844,860
RHODE ISLAND	48,420	21,240	70,320	94,980	236,040	276,660	253,680	150,780	129,420	60,480	46,980	17,040	1,406,040
SOUTH DAKOTA	-	-	-	-	-	-	-	-	-	7,300	6,300	-	13,600
TENNESSEE	-	-	-	2,040	600	-	-	-	3,660	-	6,430	9,000	21,730
VERMONT	-	-	7,260	2,460	1,440	-	-	120	-	-	-	-	11,280
VIRGINIA	95,940	63,840	39,240	90,240	34,560	39,140	20,400	37,620	38,100	135,180	161,040	174,960	930,260
WEST VIRGINIA	6,900	-	-	300	-	1,200	-	5,460	-	6,000	35,400	6,240	61,500
DIST. OF COLUMBIA	-	8,400	2,880	4,860	2,520	-	-	-	-	-	-	2,820	21,480
TOTAL - 1932	2,046,840	2,095,139	2,890,180	2,868,220	4,168,260	5,437,945	4,546,225	3,162,020	3,089,870	2,278,298	1,918,820	2,355,900	36,857,717
1931	1,036,410	1,160,360	1,942,380	2,507,968	3,185,060	4,028,940	4,413,800	1,978,400	2,107,450	1,541,900	1,350,380	1,711,620	26,964,668

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Government's Exhibit 13 (Continued)

UNITED STATES DEPARTMENT OF AGRICULTURE

Bureau of Agricultural Economics
Tel. Canal 6-2100

Market News Service
641 Washington St., Room 418-New York

RECEIPTS OF LIVE POULTRY BY STATES AT NEW YORK DURING 1933 (POUNDS) BY EXPRESS

STATES	January	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	TOTAL
ALABAMA	-	-	-	28	-	-	-	-	26	-	-	110	164
CONNECTICUT	548	730	288	219	871	2,676	940	1,662	354	862	685	985	10,820
DELAWARE	742	-	-	69	397	352	12	-	19	-	80	127	1,798
FLORIDA	-	-	-	1,139	327	-	-	-	17	-	36	50	1,569
GEORGIA	32	-	72	-	136	34	22	23	-	-	568	356	1,243
ILLINOIS	258	157	-	107	-	-	14	-	40	116	-	55	747
INDIANA	-	63	-	3,007	-	-	-	-	829	875	-	25	4,799
IOWA	100	-	-	424	-	-	-	-	-	-	-	-	524
KANSAS	-	-	-	-	-	-	-	781	-	-	-	47	828
KENTUCKY	2,031	3,255	1,884	805	-	22	-	-	-	28	26	60	8,111
MAINE	823	1,071	3,782	1,950	3,635	2,908	4,331	2,974	5,748	870	1,589	854	30,535
MARYLAND	2,577	3,376	2,859	1,424	474	1,495	1,302	840	2,399	353	1,445	807	19,351
MASSACHUSETTS	2,504	2,371	15,835	12,298	11,565	10,559	6,373	7,075	6,364	6,644	8,954	3,499	94,041
MICHIGAN	-	-	-	-	52	-	-	-	52	-	22	72	198
MINNESOTA	-	-	-	1,437	-	-	-	-	-	-	-	-	1,437
MISSISSIPPI	-	12	-	-	-	-	-	-	-	-	-	-	12
MISSOURI	-	-	-	43	-	-	-	-	-	-	81	-	124
NEBRASKA	-	-	-	30	-	-	-	-	-	-	-	-	30
NEW HAMPSHIRE	7,774	1,356	12,567	10,349	5,317	12,073	7,203	8,840	4,735	2,778	469	2,280	75,741
NEW JERSEY	6,344	790	1,417	1,209	2,825	5,283	1,495	664	1,623	449	1,816	1,177	25,094
NEW YORK	16,824	21,162	25,500	31,700	49,107	66,377	70,709	74,719	74,855	58,590	53,925	46,797	590,265
NORTH CAROLINA	2,349	3,904	10,179	3,257	4,365	438	148	129	186	135	698	432	26,220
NORTH DAKOTA	-	-	-	-	-	-	-	-	-	-	-	40	40
OHIO	74	-	776	25	222	-	-	30	44	146	-	261	1,608
OKLAHOMA	-	-	43	-	-	-	-	-	-	-	35	-	78
PENNSYLVANIA	2,841	17,168	6,395	7,234	3,767	6,338	7,854	4,710	12,358	5,462	12,174	4,869	91,170
RHODE ISLAND	345	550	120	-	-	1,512	1,153	295	369	-	601	-	4,945
SOUTH CAROLINA	12	6,106	83	102	-	90	119	61	46	172	448	942	8,181
SOUTH DAKOTA	-	-	-	87	-	-	-	-	-	-	-	-	87
TENNESSEE	6,368	3,309	-	596	28	682	-	-	-	-	735	2,884	14,602
TEXAS	-	-	-	-	-	-	-	-	-	-	147	-	147
VERMONT	3,631	3,128	6,177	2,811	4,524	12,951	7,200	8,786	7,688	5,500	3,775	7,027	73,198
VIRGINIA	108,682	148,498	94,508	43,937	33,015	39,137	51,522	46,731	30,318	9,938	29,952	47,462	683,700
W. VIRGINIA	-	640	533	816	-	176	-	106	2,222	-	4,821	829	10,143
WISCONSIN	-	-	-	250	-	-	-	-	-	-	-	-	250
DIST. OF COLUMBIA	10,216	8,532	1,130	40	824	1,020	-	913	341	29	2,322	7,229	33,148
TOTAL - 1933	175,077	226,228	184,148	125,393	121,451	164,123	160,397	159,369	150,635	92,947	125,904	129,276	1,814,948
1932	236,665	234,586	182,960	172,316	186,069	306,131	255,904	227,908	182,733	158,458	205,701	204,740	2,556,671

Government's Exhibit 13 (Continued)

Bureau of Agricultural Economics
Tel. Canal 6-2100

UNITED STATES DEPARTMENT OF AGRICULTURE

Market News Service
641 Washington St., Room 418-New York

RECEIPTS OF LIVE POULTRY BY STATES AT NEW YORK DURING 1933 (POUNDS) BY TRUCK

STATES	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	TOTAL
CONNECTICUT	98,520	75,060	125,520	169,740	305,820	446,940	343,440	237,720	246,720	181,440	94,320	95,760	2,421,000
DELAWARE	730,320	897,240	873,300	720,600	803,220	1,276,920	953,460	941,040	393,780	145,200	384,900	659,280	8,779,260
ILLINOIS	15,660	-	-	-	-	-	-	-	3,960	-	-	-	19,620
INDIANA	59,160	26,800	19,500	30,180	-	21,880	4,860	14,100	79,929	149,400	50,124	8,100	464,033
KANSAS	15,840	-	-	6,720	-	-	-	-	-	-	-	-	22,560
KENTUCKY	-	4,320	15,000	29,160	43,200	4,920	-	-	-	-	-	-	96,600
MAINE	4,800	13,260	32,040	82,680	126,960	262,200	183,240	150,240	166,620	139,980	38,880	-	1,200,900
MARYLAND	281,860	398,260	438,220	357,480	445,980	405,720	276,780	174,420	164,040	94,260	99,840	169,080	3,305,940
MASSACHUSETTS	6,460	51,000	210,960	408,360	970,200	1,681,320	1,357,740	722,040	659,340	568,500	329,460	80,460	7,047,840
MISSOURI	-	-	-	-	-	-	-	6,840	-	7,200	22,680	15,340	52,060
NEBRASKA	12,960	-	-	-	6,500	-	-	-	-	-	-	-	19,460
NEW HAMPSHIRE	23,820	2,700	86,520	171,600	484,080	877,320	742,080	550,740	484,020	412,620	138,720	85,440	4,059,660
NEW JERSEY	192,180	64,380	29,640	99,360	144,240	158,280	121,380	37,680	68,040	50,640	27,900	147,840	1,141,560
NEW YORK	260,900	412,380	716,520	554,100	727,500	831,180	676,560	565,080	722,940	786,720	423,060	348,420	7,025,360
NORTH CAROLINA	16,440	39,060	99,420	116,100	69,840	27,420	12,780	-	-	-	6,300	6,000	393,360
OHIO	33,840	4,680	6,720	-	-	-	-	5,220	9,720	8,640	12,240	6,480	87,540
PENNSYLVANIA	148,080	185,880	250,620	262,920	226,860	229,800	200,340	181,140	177,060	119,940	160,620	175,380	2,318,640
RHODE ISLAND	6,120	1,980	17,580	89,580	168,000	279,780	233,400	86,100	73,440	56,700	41,940	18,660	1,073,280
TENNESSEE	-	-	14,760	30,540	66,360	35,100	4,500	3,300	-	-	4,200	5,100	163,860
VERMONT	-	-	-	-	7,020	10,800	-	-	-	60	-	-	17,880
VIRGINIA	135,840	232,200	255,000	255,240	276,060	200,460	141,900	127,260	79,920	53,700	78,360	130,920	1,966,860
W. VIRGINIA	-	-	-	-	-	-	-	-	-	1,800	-	7,500	9,300
DIST. OF COLUMBIA	2,700	6,300	-	-	-	720	-	-	-	-	-	-	9,720
TOTAL - 1933	2,047,500	2,415,500	3,191,320	3,384,360	4,871,840	6,750,760	5,252,460	3,802,920	3,329,529	2,776,800	1,913,544	1,959,760	41,696,293
1932	2,046,840	2,095,139	2,890,180	2,868,220	4,168,260	5,437,945	4,546,225	3,162,020	3,089,870	2,278,298	1,918,820	2,355,900	36,857,717

JEB

Government's Exhibit 14

JOINT INSPECTION SERVICE ON
LIVE & DRESSED POULTRY
641 WASHINGTON ST., ROOM 311
NEW YORK CITY, N. Y.

Year	Unloads		Sick and Other cars
1928	11267 cars	339140 baskets	169930 lbs condemned.
1929	10493 "	432530 "	154979 " "
1930	10677 "	553570 "	187591 " "
1931	10152 "	514788 "	218791 " "
1932	9126 "	642042 "	235972 " "
1933	8150 "	713376 "	289228 " "

1934

	Unloads		
Jan.	772 "	32338 "	32765 " "
Feb.	624 "	26784 "	13765 " "
March	730 "	46797 "	17315 " "
April	596 "	51202 "	13828 " "
May	610 "	97049 "	14919 " "
June	495 "	90549 "	22971 " "
July	490 "	69248 "	21185 " "
Aug.	599 "	78826 "	29749 " "
Sept.	687 "	95327 "	37170 " "
	5603 cars	586120 baskets	203667 lbs condemned

Record of receipts and condemnations of Live Poultry received and inspected in the metropolitan area from 1928 to September 30th. 1934 incl.

L.D.Ives

L.D.Ives - Senior Marketing Specialist

Government's Exhibit 15

4729

SUMMARY OF EXHIBIT:

This exhibit consists of 5 inspection certificates issued by the Joint Inspection Service of the Bureau of Agricultural Economics, United States Department of Agriculture, as follows:

(1) Certificate showing inspection of 57 baskets of poultry coming from Pennsylvania to Schechter Brothers, 991 Rockaway Avenue, Brooklyn, New York, April 20, 1933. Inspection made at Schechter Brothers slaughter house.

4730

(2) Certificate showing inspection of 84 baskets of poultry coming from Philadelphia to Rugby Live Poultry Company, 858 East 52nd St., Brooklyn, New York, July 8, 1933. Poultry was inspected at Elizabeth, New Jersey.

(3) Certificate showing inspection of 65 baskets of poultry coming from Pennsylvania to Schechter Brothers, 991 Rockaway Avenue, Brooklyn, New York, May 28, 1934.

(4) Certificate showing inspection of 105 baskets of poultry coming from Pennsylvania to Schechter Brothers, 991 Rockaway Avenue, Brooklyn, New York, May 30, 1934. Poultry was inspected at Wallabout Market.

4731

(5) Certificate showing inspection of 176 baskets of poultry coming from Pennsylvania to Schechter Brothers, 858 East 52nd Street, Brooklyn, New York, May 30, 1934. Certificate indicates that 3 chickens died en route.

Government's Exhibit 16

This exhibit is a copy of the rules and regulations of the United States Department of Agriculture under the Act of Congress approved May 11, 1926 (44 Stat. L. 499, 523) setting up a duly

4732 *Government's Exhibit 16*

authorized inspection service, and among said rules is to be found the following definition of unfit poultry:

"Poultry with the following symptoms shall be deemed unfit for consumption:

1. Birds with both eyes swollen and closed.

2. Birds that are sneezing, coughing, or gaping, and have ruffled, unclean feathers and are not inclined to eat or move about.

4733

3. Birds that have empty crops, ruffled and unclean feathers rather darm combs, emaciated, and below normal weight, and assume a hunched up position and do not eat.

4. Birds with pale yellow skin about their beaks, thin in flesh, and have little or no meat on their breasts even though they eat and are active.

5. Birds with compound fractures of legs or wings, or with extensive lacerations and hemorrhagic areas under the skin.

4734

6. Birds showing prolapsed rectum with necrosis of surrounding tissues with anus bruised and bleeding.

7. Birds with dropped abdomen either due to large quantity of fluid, hernia, tumor, or large mass of retained ova (eggs).

8. Birds which do not eat and show emaciation and have abnormally large crops which are hard.

Government's Exhibit 17 4735

9. Birds which are not inclined to eat, and show necrotic patches about the mouth and on the comb and are emaciated.

10. Birds which remain apart from the rest of the birds, show a pasty gray semi-solid fecal mass adhering to the feathers about the anus or a very fetid green or brown watery discharge, or whose excreted feces show large quantities of pinworms or tapeworm segments.

11. Birds with toxemia as indicated by 4736
twisted necks.

This entire exhibit may be submitted to the appellate court without printing.

Government's Exhibit 17

This exhibit is a copy of the Sanitary Code of the Department of Health of the City of New York, and regulations pursuant thereto governing live poultry inspection. Section 19, of the Sanitary Code, which is a part of the Ordinances 4737
of the City of New York, reads as follows:

Live rabbits, or poultry, the keeping, killing and sale regulated.—No live rabbits or poultry shall be brought into, or kept, held, offered for sale, sold or killed in, any yard, area, cellar, coop, building, premises, public market, or other public place, except premises used for farming in unimproved sections of the City, without a permit therefor issued by the Board of Health, or otherwise than in accordance with the terms of said permit and with the regulations of said Board.

The word "poultry" as used herein shall be deemed to mean and include chickens,

4738 geese, ducks and other fowls or domestic birds used for food purposes. (Amended by the Board of Health, April 3rd, 1933.)

Regulation 15 reads as follows:

Regulation 15. *Live rabbits or poultry; inspection required.*—No live rabbits or poultry shall be brought into the City of New York or unloaded from railroad cars, trucks or other vehicles of transportation, or held, kept, offered for sale until properly inspected and passed as to crop and health conditions.

4739

Such inspection shall be made by a duly authorized inspection service of the United States Department of Agriculture at the railroad terminal or at any other point within the territorial boundaries contained in Regulations 2, 3 and 4 herein.

This entire exhibit may be submitted to the appellate court without printing.

4740 **Government's Exhibit 19**

Notice of hearing on proposed Code of Fair Competition for the Live Poultry Industry before the adoption of the Code. This entire exhibit may be submitted to the appellate court without printing.

Government's Exhibit 20

Certificate of list to whom mimeographed copies of the notice of hearing (Exhibit 19) were mailed, which list includes the names Schechter & Schechter, 858-860 E. 52nd St., Bklyn., N. Y.; Samuel Schechter, 991 Rockaway Ave., Bklyn, N. Y., and David Schechter, 539 Snediker Ave., Brooklyn, N. Y. Submitted without printing.

Government's Exhibit 21

4741

Certified copy of the proposed code mailed to those listed in Exhibit 20. This proposed code is identical with the code as adopted insofar as it relates to this proceeding. The entire exhibit may be submitted to the appellate court without printing.

Government's Exhibit 22

NEW YORK POULTRY RECEIPTS [1]

4742

LIVE POULTRY

Year	Cars Received	Index-1925-29=100
1927	13,484	108
1928	12,900	103
1929	12,142	97
1930	12,486	100
1931	11,905	95
1932	11,316	91
1933	10,565	84

[1] Figures made available by the Bureau of Agricultural Economics—Division of Dairy and Poultry Products (Mr. G. W. Sprague).

4743

Government's Exhibit 23

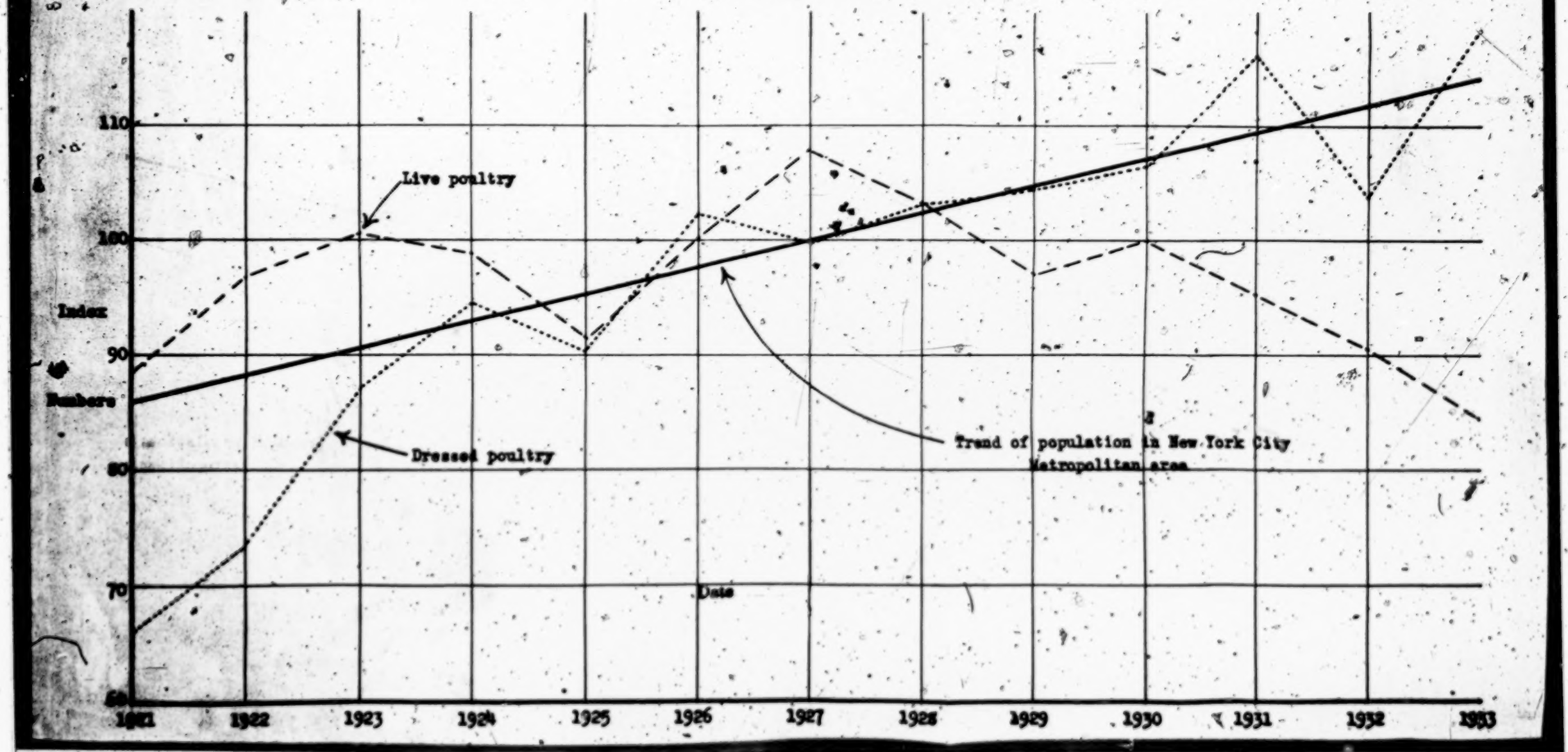
PRICE PER POUND IN NEW YORK MARKET

Year	Average Annual Price of Colored Fowls	Average Annual Price of Colored Chickens
1927	27.0	28.5
1928	28.8	31.4
1929	31.2	30.3
1930	25.5	25.2
1931	22.2	22.5
1932	17.5	15.8
1933	14.4	13.8
1934		

Government's Exhibit 24

LIVE AND DRESSED POULTRY RECEIPTS AT NEW YORK CITY AS RELATED TO THE TREND IN INCREASE OF POPULATION

Average 1925 to 1929 = 100



Government's Exhibit 25

4753

The Minutes of the Meeting for the Purposes of Electing Two Representatives to the Industry Advisory Committee for the Code of Fair Competition of the Live Poultry Industry of the Metropolitan Area in and About the City of New York to Represent Slaughter House Operators Not Members of the Live Poultry Slaughter House Association, Inc. of New York or of the Merchants' Association for Live Poultry, Inc. of New York, Held in Room No. 901, Federal Building, 641 Washington Street, New York City, on Monday, April 23, 1934 at 3:30 P. M.

4754

This Code having been approved by the President of the United States on April 13th, 1934, became effective of this date April 23rd, 1934. The meeting was called to order by Mr. W. D. Termohlen of the Department of Agriculture, Washington, D. C. for the purposes of the election of two members of the Industry Advisory Committee to represent slaughter house operators not members of the Live Poultry Slaughter House Association, Inc. of New York, and not members of the Merchants Association for Live Poultry, Inc. of New York. The notice of election was read. Al Winkel was elected chairman of the meeting and presided over the meeting. The chairman appointed Aaron Schechter secretary. The roll was called and eligibility of the members of the industry checked.

4755

The chairman called for nominations for a representative to the Industry Advisory Committee from within the five boroughs of New York City. The following were nominated: Al Winkel, S. Wiener, and B. Panesh. Nominations were closed.

4756 *Government's Exhibit 26*

The chairman then called for nominations for a representative to the Industry Advisory Committee from outside the five boroughs. The following were nominated: A. Klein, V. Melillo, I. Robbins, S. Lepoff, M. Fernhoff. Nominations were closed.

The chairman appointed A. Poster and B. Meyers as inspectors of election. Votes were cast by secret ballot by all eligible to vote. The votes were then counted by the inspectors of
4757 election who announced the result as follows: Winkel—33, Wiener—6, Panesh—3, Klein—18, Lepoff—2, Fernhoff—3, Robbins—8, Melillo—1, Winkel and Klein were declared elected.

Certificate of election was signed by the inspectors and the meeting adjourned.

Duly Certified,

(signed) AARON SCHECHTER,
Secretary.

4758 **Government's Exhibit 26**

Certified copy of the Code duly filed with the Secretary of State and with the Agricultural Adjustment Administration, Department of Agriculture, Washington, D. C., and approved by the President of the United States. This copy is identical with the Code as set out in the indictment.

4759

Government's Exhibit 27

Location—991 Rockaway Ave Borough—Brooklyn

Name—Schechter Sam Case No. B3449

BUREAU OF FOOD AND DRUGS

FACTS FOR ARREST OR FOOD CONDEMNATION REPORT

From—H. W. Gardner D V. M
To—Chief Meat & Poultry Inspection.

4760

On June 28 1934, at 11 00 A. M., I made an inspection of the Poultry Sl. House located at the above given address and would report as follows:

Condemned 6 chickens (19 lbs) as unfit for food. They were isolated in a spindle coop with a few other apparently healthy but poor poultry.

The above mentioned foods were denatured on premises with disinfectant and disposed of as follows:

Joe Schechter in charge stated that Sam Schechter was owner of the above business. This is a domestic, foreign corporation

4761

stated that he was President, Secretary, Treasurer.

Summons served, Section Disposition

H. W GARDNER D V.M
Inspector.

This Space for Office Use Only

Rec'd by Borough Chief
Action taken
For'd by Borough Chief
Rec'd in Director's Office
Action taken
Ref'd to Law Division

4762 *Government's Exhibit 37*

[RUBBER STAMPS]

Ref. to Special Trial Board
Sec. Viol. 325 Reg 8-H F W Schoneweg DVS
Chief
Entered in Prosecution Book (Initials illegible)
Ford. to Special Trial Board B 7-6-34

For Hearing by
Minor Special Trial Board
Jul 9 1934

4763

[REVERSE SIDE]

Steamship — Consignee
Date of Arrival — Dutiable
Ordered Overhauled — Overhauling Completed
Cargo Discharged

SUMMARY OF FOOD CONDEMNATION

Character of Food	Marks	Weight	Quantity (Show type of container)	Reason for Condemnation
4764			Two (2) chickens	Salpingitis with peritonitis
Poultry		19	Two (2) "	emaciation
			Two (2) "	extensive bruises with fractures

Total 19 lbs

The above-mentioned foods were denatured on premises with disinfectant and disposed as follows:

H. W. GARDNER D.V.M
Inspector.

Government's Exhibit 28 4765

Department of Health—City of New York
Bureau of Food and Drugs
Facts for Arrest—Condemnation Record

[rubber stamps]

Received
Special Trial Board
Jul 6 1934

Received
Jul 2 1934 4766
Div. Meat & Poultry Inspection

Previous Record
No. Court Actions Yes
No. Special Trial Board Actions

Government's Exhibit 28

Location—858-60 E. 52nd St. Borough—Brooklyn
Name—Schechter Alex & Martin Case No. 4767
B3448

Bureau of Food and Drugs

FACTS FOR ARREST OR FOOD CONDEMNATION REPORT

From—H. W. Gardner D V. M
To—Chief Meat & Poultry Inspection.

On June 28, 1934, at 11 45 A. M., I made an inspection of the Poultry Sl. House located at the above given address and would report as follows:

4768 *Government's Exhibit 28*

Condemned 4 chicken (10 lbs) as unfit for food. They were isolated in a coop with a few other apparently healthy but poor chickens in the back room

The above-mentioned foods were denatured on premises with disinfectant and disposed of as follows:

Alex & Martin Schechter stated that they were partners of the above business.
stated that he was President, Secretary, Treasurer.

4769 Summons served, Section Disposition

H. W Gardner D.V.M.
Inspector.

This Space for Office Use Only

Rec'd by Borough Chief
Action taken
For'd by Borough Chief
Rec'd in Director's Office
Action taken
4770 Ref'd to Law Division

[RUBBER STAMPS]

Ref. to Special Trial Board
Sec. Viol. 325 Reg 8-H F W Schoneweg DVS
Chief

Entered in Prosecution Book (Initials illegible)
Ford. to Special Trial Board B 7-6-34

For Hearing by
Minor Special Trial Board
Jul 9 1934

Government's Exhibit 28 4771

[REVERSE SIDE]

Steamship — Consignee
Date of Arrival — Dutiable
Ordered Overhauled — Overhauling Completed
Cargo Discharged

SUMMARY OF FOOD CONDEMNATION

Character of Food	Marks	Weight	Quantity (Show type of container)	Reason for Condemnation
Poultry		10 lbs	Three (3) chickens	Emaciation
			One (1) "	Roup & Emaciation

4772

Total 10 lbs

The above-mentioned foods were denatured on premises with disinfectant and disposed as follows:

H. W. GARDNER D.V.M.
Inspector.

Department of Health—City of New York
BUREAU OF FOOD AND DRUGS
Facts for Arrest—Condemnation Record

4773

[RUBBER STAMPS]

Received
Special Trial Board
Jul 6 1934

Received
Jul 2 1934
Div. Meat & Poultry Inspection

Previous Record
No. Court Actions None
No. Special Trial Board Actions

Week Commencing
May 22, 1934

991 Rockaway Ave

Name—Schechter's Live Poultry Market Inc.

Wholesale Slaughter House

Week Ending May 25, 1934

	Sunday		Monday		Tuesday		Wednesday		Thursday		Friday	
	Pounds	Price Average	Pounds	Price Average	Pounds	Price Average	Pounds	Price Average	Pounds	Price Average	Pounds	Price Average
Colored Fowl					2658	17	1195	16[2]	5076	17	831	17
Leghorn Fowl					990	15	440	12	604	15[2]	604	15
Average—							1102	15				
Rock Broilers					128	27	108	27	659	27[2]	202	27
							348	24	750	23[2]	148	22
Average					668	23	363	25				
							355	20			528	20
Sub. Total					4444		2911		7089		2313	

Tuesday	4444
Wed.	2911
Thurs	7089
Fri.	2313

Total Pounds for Week=16757 @ 1c per 50 pounds=$3.35.

Schechter L. P. Market

Signature of Member of Firm—

Joseph Schechter, Pres.

In computing the above figures include sales of merchandise purchased from commission merchant, jobber and direct from shipper or producer.

Make Checks Payable to E. V. Dwyer, Treasurer

Week Ending June 1, 1934

	Sunday		Monday		Tuesday		Wednesday		Thursday		Friday	
	Pounds	Price Average	Pounds	Price Average	Pounds	Price Average	Pounds	Price Average	Pounds	Price Average	Pounds	Price Average
Colored Fowl	88	19¢	1776	19	1267	19	1322	18¢	5370	18¢	2034	17¢
Leghorn Fowl												
Average					239	17¢	701	16¢	725	16¢	287	15¢
Poor			64	9			40	9			16	9
Rock Broilers	56	29	220	28	103	28¢	247	27¢	483	27	190	26
Average					395	22¢	829	22¢	483	22	314	19
Sub. Total	144		2060		2004		3139		7061		2825	
											16	

Sun	144
Mon	2060
Tues	2004
Wed	3139
Thurs	7061
Fri	2825 }
	16 }

Total Pounds for Week=17249 @ 1c per 50 pounds=$3.45.

Schechter L. P. Market

Signature of Member of Firm—

Joseph Schechter, Pres.

4779 4778 4777

Government's Exhibit 29

1593

Week Ending June 8, 1934

	Sunday Pounds	Sunday Price Average	Monday Pounds	Monday Price Average	Tuesday Pounds	Tuesday Price Average	Wednesday Pounds	Wednesday Price Average	Thursday Pounds	Thursday Price Average	Friday Pounds	Friday Price Average
Colored Fowl	25	18	977	17½	550	17½	627	17½	5329	18	1563	17½
Leghorn Fowl	375	14										
Average			703	15	355	14½	471	15½	649	15	139	15
Poor							26	14				
Rock Broilers	46	28	92	28	170	28	162	28	583	29	163	28
Average			18	24	291	23½	63	22	576	23	231	20
Sub. Total	446		1790		1366		1349		7137		2096	

Sun.	446
Mon	1790
Tues	1366
Wed	1349
Thurs	7137
Fri	2096

Total Pounds for Week=14184 @ 1c per 50 pounds=$——.

Schechter L. P. Market
Signature of Member of Firm—
Joseph Schechter, Pres.

Government's Exhibit 29

1594

Week Ending June 15, 1934

	Sunday		Monday		Tuesday		Wednesday		Thursday		Friday	
	Pounds	Price Average	Pounds	Price Average	Pounds	Price Average	Pounds	Price Average	Pounds	Price Average	Pounds	Price Average
Colored Fowl	95	18	1158	17½	430	18	259	17½	4099	17½	1195	15½
Leghorn Fowl			357	15½	1971	16	661	15	2248	15	376	16
Average					76	14	349	13	197	12	155	12½
Rock Broilers	85	29½	427	28	458	27	53	27	787	27	89	27
Average			183	21	549	22	363	22	925	22	136	22
Sub. Total	180		2125		3484		1685		8256		1951	

Sun	180
Mon	2125
Tues	3484
Wed	1685
Thurs	8256
Fri	1951

Total Pounds for Week=17681 @ 1c per 50 pounds=$7.07.

Schechter L. P. Market

Signature of Member of Firm—

Joseph Schechter, Pres.

4785

4784

4783

1595

Government's Exhibit 89

Week Ending June 22, 1934

	Sunday		Monday		Tuesday		Wednesday		Thursday		Friday	
	Pounds	Price Average	Pounds	Price Average	Pounds	Price Average	Pounds	Price Average	Pounds	Price Average	Pounds	Price Average
Colored Fowl	25	18	729	17[2]	853	18[2]	285	18[2]	3740	18[2]	266	18[2]
Leghorn Fowl												
Average			419	15[2]			601	15[2]	159	15	550	14[2]
Poor											384	
Rock Broilers	23	29	163	28	49	30	72	27	697	28	91	27
Average			152	24	41	26	22	20	912	23	439	22
Sub. Total	48		1463		943		980		5508		1730	

Sun	48
Mon	1463
Tues	943
Wed	980
Thurs	5508
Fri	1730

Total Pounds for Week=10672 @ 1c per 50 pounds=$4.27.

Schechter L. P. Market

Signature of Member of Firm—

JOSEPH SCHECHTER, Pres.

Name—A. L. A. Schechter L. P. Corp.
858 East 52 Bklyn

Wholesale Slaughter House — Week Ending April 30, 1934

	Monday 23 Pounds	Price	Tuesday 24 Pounds	Price	Wednesday 25 Pounds	Price	Thursday 26 Pounds	Price	Friday 27 Pounds	Price	Saturday 28 Pounds	Price
Colored Fowl	2866	19¢	2698	18²	2105	18	11867	19	4524	19	490	19
Rock Broilers	216	29¢	550	28	492	28	1089	28	345	28	167	28
Sub. Total	3082		[redacted]		2597		12956		4869		657	

Pounds
3082
3248
2597
12956,
4869
657
527
27936

Ducks — Thursday 527 17²

Make Checks Payable to E. V. Dwyer, Treasurer

Total Pounds for Week=27936 @ 1c per 50 pounds=$5.58.

Signature of Member of Firm—

Louis Schechter Secy.

In computing the above figures include sales of merchandise purchased from commission merchant, jobber and direct from shipper or producer.

4791

4790

4789

1597

Government's Exhibit 30

4794 4793 4792

Week Ending May 7—1934

	Monday Apr 30		Tuesday 1		Wednesday 2		Thursday 3		Friday 4		Saturday 5	
	Pounds	Price	Pounds	Price	Pounds	Price	Pounds	Price	Pounds	Price	Pounds	Price
Colored Fowl	2125	20¤	2329	21	2032	21	10947	20	5566	21¤	568	21
Rock Broilers	567	29	657	28	487	28	9727	28	650	29	220	28¤
Sub. Total	2692		2986		2519		20674		6216		788	

Pounds
2692
2986
2519
20674
6216
788
640
36515

Ducks

Thursday
640 18

Total Pounds for Week=36515 @ 1c per 50 pounds= $——.

Signature of Member of Firm—

Louis Schechter Secy.

Government's Exhibit 30

1598

Week Ending May 14—1934

	Monday 7		Tuesday 8		Wednesday 9		Thursday 10		Friday 11		Saturday 12	
	Pounds	Price	Pounds	Price	Pounds	Price	Pounds	Price	Pounds	Price	Pounds	Price
Colored Fowl	3205	19	4285	19	2251	18½	11031	18	2845	18	325	19
Rock Broilers	775	28	625	29	585	29	1557	28	593	27	267	28
Sub. Total	3980		4910		2836		12588		3438		592	

Pounds
3980
4910
2836
12588
3438
592
850
29194

Ducks — Thursday 850 17½

Total Pounds for Week=29194 @ 1c per 50 pounds= $——.

Signature of Member of Firm—

Louis Schechter Secy.

4797 4796 4795

1599 *Government's Exhibit 90*

Week Ending May 21—1934

	Monday		Tuesday		Wednesday		Thursday		Friday		Saturday	
	Pounds	Price	Pounds	Price	Pounds	Price	Pounds	Price	Pounds	Price	Pounds	Price
Colored Fowl	2932	18½	2827	18	1902	19	11765	18½	4211	19	575	19
Rock Broilers	310	28	335	29	235	29	997	28	395	28	175	29
					May	16		17		18		19
Sub. Total	3242		3162		2137		12762		4606		750	

Pounds
3242
3162
2137
12762
4606
750
610
27269

	Thursday	
Ducks	610	18

Total Pounds for Week=27269 @ 1c per 50 pounds=$——.

Signature of Member of Firm—

Louis Schechter Secy.

Week Ending May 28

	Monday		Tuesday		Wednesday		Thursday		Friday		Saturday	
	Pounds	Price	Pounds	Price	Pounds	Price	Pounds	Price	Pounds	Price	Pounds	Price
Colored Fowl	2975	17	2862	18	2304	18	11962	18²	3527	18²	401	19
Rock Broilers	275	28	599	29	462	28	1057	28	211	28	175	29
Sub. Total	3250		3461		2766		13019		3738		576	

Pounds
3250
3461
2766
13019
3738
576
640
27450

	Thursday	
Ducks	640	17

Total Pounds for Week=27450 @ 1c per 50 pounds=$——.

Signature of Member of Firm—

Louis Schechter Secy.

4803

4802

4801

1601

Government's Exhibit 30

Week Ending June 4—34

	Monday Pounds	Price	Tuesday Pounds	Price	Wednesday Pounds	Price	Thursday Pounds	Price	Friday Pounds	Price	Saturday Pounds	Price
Colored Fowl	3311	18½	4262	19	2801	18½	12062	19	5562	19	475	19
Rock Broilers	345	29	720	28	501	28	1101	27²	460	28	200	29
Sub. Total	3656		4982		3302		13163		6022		675	

Pounds
3656
4982
3302
13163
6022
675
765
32565

Ducks Thursday 765 17²

Total Pounds for Week=32565 @ 1c per 50 pounds=$——.

Signature of Member of Firm—

Louis Schechter Secy.

Week Ending June 11—1934

	Monday Pounds	Price	Tuesday Pounds	Price	Wednesday Pounds	Price	Thursday Pounds	Price	Friday Pounds	Price	Saturday Pounds	Price
Colored Fowl	2932	18¢	2978	19	2607	18¢	11602	18¼	4422	18.	377	19
Rock Broilers	295	28	492	29	488	29	987	29	407	28	207	29
Sub. Total	3227		3470		3095		12589		4829		584	

Pounds
3227
3470
3095
12589
4829
584
611
28405

Ducks 108,6

Thursday
611 18

Total Pounds per Week=28405 @ 1c per 50 pounds=$——.

Signature of Member of Firm—

Louis Schechter Secy.

4809

4808

4807

1603

Government's Exhibit 30

4810

Government's Exhibit 31

Brooklyn, N. Y.
June 26, 1934.

Code Authorities,
Live Poultry Industry
641 Washington St N. Y.

Gentlemen,

For your information, I am giving you the details regarding the wholesale slaughter house
4811 at 991 Rockaway Ave., Brooklyn, N. Y.
This place since May 16, 1934 has been owned and operated by Schechters' Live Poultry Market, Inc. (New York)

I am the president and my wife Lily is the vice Pres. and Secretary—Our home address is 257 Brighton Beach Ave Brooklyn N. Y.

This corporation has no connection with any other concern and has been operating at 991 Rockaway Ave., Bklyn, since May 16, 1934. For about three months previously, place was closed and no business carried on. Before that date (about Feb 15, 1934) this place was owned and
4812 operated by { Sam Schechter } personally. As
{ and Joe Schecter }
a matter of fact the permit is still is Sam Schechters name and a new one in the name of Schechters L. P. Mkt Inc. is expected this week.

Schechter L. P. Market.

Joseph Schechter
Pres.

Written by J Musicant and signed in his presence.

4813

Government's Exhibit 32

Summary: Invoices showing sales of poultry by Risser & Rabinowitz, Inc. of Philadelphia, Pennsylvania, to A. L. A. Schechter Poultry Corp. and Joseph Schechter, covering following dates and following totals.

A. L. A. Schechter Poultry Corp., May 30, 1934, poultry weighing 10,723 lbs. valued at $1,647.00, comprising 168 containers.

A L. A. Schechter Poultry Corp., May 30, 1934, poultry weighing 565 lbs., valued at $87.58, comprising 8 containers.

4814

A. L. A. Schechter Poultry Corp., May 26, 1934, poultry weighing 5,200 lbs., valued at $807.56, contained in 82 baskets.

Government's Exhibit 33

Summary: Invoice showing sales of poultry by Risser & Rabinowitz, Inc. of Philadelphia, Pennsylvania, to Joseph Schechter, May 28, 1934, weighing 7,209 lbs., valued at $1,148.20, and comprising 111 baskets.

4815

Government's Exhibit 34

Summary: Invoice showing sale of poultry by Risser & Rabinowitz, Inc. of Philadelphia, Pennsylvania, to A. L. A. Schechter Poultry Corp., May 28, 1934, weighing 7,144 lbs., valued at $1,140.13, and comprising 38 coops.

4816

Government's Exhibit 35

Summary: Invoice showing sale of poultry by Risser & Rabinowitz, Inc. of Philadelphia, Pennsylvania, to Joseph Schechter, May 30, 1934, weighing 6,577 lbs., valued at $1,019.44, and comprising 105 baskets.

Government's Exhibit 36

4817 Represents copies of defendant, A. L. A. Schechter Poultry Corp.'s books, to be submitted to the appellate court without printing.

Government's Exhibit 37

I worked the following hours last week.

Monday	11
Tuesday	11
Wednesday	12
Thurs.	17
4818 Friday	13
Sat.	9
	73

LEO SCHIMMEL.

[REVERSE SIDE]

They allow me 2 fowls each week.

Daily Sales Made by A. L. A. Schechter from May 16, 1934 to June 9, 1934 (Inclusive) Fowl and Broilers Only
With High, Low and Average Selling Prices & Average Purchase Price Except Duck

Date	Fowl Pounds	Fowl Amount	Selling Prices High	Selling Prices Low	Selling Prices Average	Broilers Pounds	Broilers Amount	Selling Prices High	Selling Prices Low	Selling Prices Average	Average Sales Price	Average Purchase Price
May 16	1888¼	31927	20	15	1690	573	14509	29	23	25.32		
" 17	20541	352272	20	08	1714	4691½	99587	29	15	2122		
" 18	8901	152437	20	08	1712	1994½	43518	29	08	2181		
Totals	31330¾	536636				7259	157614				17.99	1647
May 21	1118	16770	15	15	15	509	11185	23	20	2197		
" 22	3264½	54947	19	08	1680	1344½	32692	29	16	2220		
" 23	4625½	70066	19	15	1514	759¼	20520	30	25	2716		
" 24	14678½	245300	19	08	1671	3563	91396	30	15½	2617		
" 25	4909¼	87291	23	08	1776	2157½	50497	30	08	2340		
" 26	329	6415	21	19	1949	157½	4184	29	24	2664		
	28924¼	480789				8480¼	210474				1847	1660
May 27 (Sunday)	330¼	6352	21	19	1924	108¼	2676	29	24	2477		
" 28	3190½	60323	21	17	1890	954¼	25005	30	21	2620		
" 29	3307	61568	21	17	1861	1030½	26268	30	05	2550		
" 30	1984	36867	21	17	1859	807½	20564	30	22	2554		
" 31	19889	349542	21	08	1757	3311	74595	30	08	2252		
June 1	4273½	68496	21	08	1551	875¾	18777	30	08	2147		
" 2	995¼	14811	19	14	1502	194½	6049	31	25	2806		
	33970½	597959				7282¼	173934				1861	1713
June 3 (Sunday)	67½	1080	16	16	16	18½	537	29	29	29		
" 4	2127¼	34608	19	14	1627	1555	37296	30	18	2392		
" 5	2844½	36400	19	04	1671	1572¼	30843	31	24	2396		
" 6	4358½	71707	20	16	1645	578¼	16013	31	24	2770		
" 7	10464¼	181829	20	10	1738	3522¾	88221	30	10	2504		
" 8	4099¾	71406	20	14	1498	540¼	13183	31	08	2441		
" 9	2690	38747	18	14	1444	208¾	5647	31	25	2717		
	26651¼	435777				7995¼	191740				1811	1739

RECAPITULATION

Fowl	120878	2051161
Broilers	31027	733762
	151905	2784923
Duck	8172	
	160077	

Government's Exhibit 38

1607

4821 4820 4819

Reports of A. L. A. Schechter to Code Authority

Date 1934		—Colored Fowl— Pounds	Price	—Rock Broilers— Pounds	Price	Duck Pounds	Price	
day	May 7	3205	19	775	28	—	—	
	" 8	4285	19	625	29	—	—	
	" 9	2251	18²	585	29	—	—	
r	" 10	11031	18	1557	28	850	17²	
	" 11	2845	18	593	27			
	" 12	325	19	267	28			
Total		23942	—	4402	—	850	—	29194
day	May 14	2932	18²	310	28	—	—	
day	" 15	2827	18	335	29	—	—	
nesday	" 16	1902	19	235	29	—	—	
sday	" 17	11765	18²	997	28	610	18	
ay	" 18	4211	19	395	28	—	—	
rday	" 19	575	19	175	29	—	—	
Total		24212	—	2447	—	610	—	27269
day	May 21	2975	17	275	28	—	—	
day	" 22	2862	18	599	29	—	—	
nesday	" 23	2304	18	462	28	—	—	
rsday	" 24	11962	18²	1057	28	640	17	
ay	" 25	3527	18²	211	28	—	—	
rday	" 26	401	19	175	29	—	—	
Total		24031	—	2779	—	640	—	27450
day	May 28	3311	18¼	345	29	—	—	
	" 29	4262	19	720	28	—	—	
	" 30	2801	18¼	501	28	—	—	
r	" 31	12062	19	1101	27²	765	17²	
	June 1	5562	19	460	28	—	—	
	" 2	475	19	200	29			
Total		28473	—	3327	—	765	—	32565
	June 4	2932	18²	295	28	—	—	
	" 5	2978	19	492	29	—	—	
	" 6	2607	18²	488	29	—	—	
r	" 7	11602	18¼	987	29	611	18	
	" 8	4422	18	407	28	—	—	
	" 9	377	19	207	29	—	—	
Total		24918	—	2876	—	611	—	*28405
		125576		15831		3476		144883

May 7, 1934 To June 9, 1934 Inc.

Colored Fowl	125576
Rock Broilers	15831
Ducks	3476
	144883

May 16, 1934 To June 9, 1934 Inc.

Colored Fowl	95875
Rock Broilers	10784
Ducks	2626
	109285

Sales Record—May 16 to June 9

Colored Fowl	120872¼
Rock Broilers	31027¼
	151900½
Duck Sales	8172¼
	160073¼
Sales Reported	109285
Additional Sales Shown by the Books	50788¼

Government's Exhibit 40

4825

Sales Made to Certain Customers by A. L. A. Schechter Co.
May 16-1934 to June 11-1934

Date	Customer		Fowl Pounds	Fowl Price	Fowl Amt.	Broilers Pounds	Broilers Price	Broilers Amt.	
May 16	M. D. L. P.	√	1024	15	15360	323 √	(23)	7429	
17	M. D. L. P.	√	984	15	14760	1071 √	15	16065	
17	M. D. L. P.	√	1039	15²	16105	339 √	(23)	7797	
17	M. D. L. P.	√				51² √	13²	696	
18	M. D. L. P.	√				166 √	(23)	3818	
18	M. D. L. P.	√	19	16	304	40² √	20	870	
21	Joe Schechter	√				167	(23)	3841	
21	M. D. L. P.	√	1118	15	16770	168	(23)	3864	4826
22	M. D. L. P.	√				174 √	20	3480	
23	M. D. L. P.	√	135	15	2025	165	22²	3713	
23	Joe Schechter	√	909	14²	13181				
23	M. D. L. P.	√	930	14²	13485				
24	M. D. L. P.	√	1972	14¼	28101				
24	J. Schechter	√							
24	M. D. L. P.	√				511	24	12264	
25	M. D. L. P.	√	956	17	16252	166	(25)	4150	
25	J. Schechter	√				477	25	11925	
28	Sam Cohen	√	4²	17	77	160	25	4000	
31	J. Schechter	√	128	13²	1728	2²	(26)	65	
31	M. D. L. P.	√	1449	16	23184				
			3545	16	56720	343	14²	4974	
31	J. Schechter	√	1866	16	29856				
June 1	M. D. L. P.	√	5	15	75				
2	M. D. L. P.	√	600	14	8400				
2	M. D. L. P.	√	8²	15	128	4¼	(26)	111	
4	J. Schechter	√				31²	(26)	819	
4	J. Schechter	√				259	24	6216	4827
						380	21	7980	
4	M. D. L. P.	√				200	21	4200	
						127	24	3048	
5	M. D. L. P.	√	574	16	9184	158	21	3318	
5	J. Schechter	√	177	14	2478	178	26	4628	
			382	16	6112	202	26	5252	
6	M. D. L. P.	√	1088	16	17408				
			1968	16	31488				
7	M. D. L. P.	√				360	26²	9540	
7	M. D. L. P.	√	992	15²	15376				
8	M. D. L. P.	√	334	25²	8517				
			166	21	3446				
8	M. D. L. P.	√	948	14	13272				
9	J. Schechter	√	1368	14	19152				
			926	14	12964				
9	Sam Cohen	√				4¼	25	106	
11	M. D. L. P.	√	987	14²	14311	167	21²	3591	
	Totals		26602		410219	6395½		137760	

RECAPITULATION

Fowl	26602	410219
Broilers	6395½	137760
Totals	32997½	547979
	1154	

987
167

A. L. A. SCHECHTER CO. INC.
COMPARATIVE AVERAGE PRICES OF TOTAL SALES & SALES TO SPECIAL CUSTOMERS
SPECIAL CUSTOMERS ARE M. D. L. P. & JOE SCHECHTER

Date	Fowl				Broilers				4	
	Average Sales Price	Average Sales Price Special	High Price for day	Low Price for day	Average Sales Price	Average Sales Price Special	High Price for the Day	Low Price for the Day	1 Average Sales Price to Special of F. & B.	2 Average Cost of Both F. & B.
May 16	1690	15	20	15	2532	23	29	23		
17	1714	1525	20	08	2122	1680	29	13[2]		
18	1712	16	20	08	x 2181	2275	29	08	1645	1614
21	x 15—	15	15	15	x 2197	2197	23	20		
22	1680		19	08	x 2220	2250	29	16		
23	1514	1453	19	15	2716		30	25		
24	1671	1425	19	08	2617	2424	30	15[2]		
25	1776	1700	23	08	x 2340	2500	30	08	1711	1628
28	1890	1700	21	17	2620	2600	30	21		
31	1757	1595	21	08	252	1450	30	08		
June 1	1551	1500	21	08	2147		30	08		
2	1502	1400	19	14	2806	2600	31	26	1575	1633
4	1627		19	14	2392	2233	30	18		
5	1671	1567	19	04	x 396	2453	31	24		
6	1645	1600	20	16	2770		31	24		
7	1738	1550	20	10	x 2504	2650	30	10		
8	x 1498	1742	20	14	2441		31	08		
9	1444	1400	18	14	2717	2500	31	25	1705	1691
11		1450				2150				

(1) Average selling price of Fowl & Broilers combined. All sales made to special customers (computed by the week)
(2) Average purchase price of Fowl & Broilers combined (computed by the week)
(6) x Prices charged M. D. L. P. & J. S. equal or exceed average price charged to others
Almost all prices made to M. D. L. P. & J. S. equal or exceed low price for the day

4831

Defendants' Exhibit A

Picture of live poultry freight car. Submitted without printing.

Defendants' Exhibit B

Inspection receipt. Submitted without printing.

Defendants' Exhibit C

4832

June 19, 1934

Mr. Leroy Peterson
Code Supervisor
Live Poultry Industry of the
Metropolitan Area
641 Washington Street
New York City

Dear Sir:

Confirming conference had yesterday with you and your counsel and other assistants, and pursuant to suggestion of the attorney for the Code Authority of your industry, I hereby state that my clients are willing to file the reports so that you may ascertain the assessment due and they will pay the same on condition, however, that the filing of any reports and the payment of any of the assessments, shall be without prejudice to any defense that my client, the Schechter firms, may set up as against any prosecution to be instituted by the Government or any of its agents, against them.

4833

The reason for such an agreement is that I have been given to understand that the entire

4834 *Defendants' Exhibit D*

matter has been referred to Washington, for the purpose of prosecution for any alleged violations of the Code by the Schechter firms.

If this is agreeable, as I understand that it is, you will be good enough to deliver to bearer a letter stating that the reports filed and the assessments paid, are without prejudice as to any of the rights or legal defenses that the persons or firms filing such reports may have as against any prosecution in any Court.

4835 You will also please deliver to bearer the necessary forms sufficient in number for the three firms to file.

Very truly yours,

JH:ET

Defendants' Exhibit D

CODE AUTHORITY
for the
LIVE POULTRY INDUSTRY OF THE
4836 METROPOLITAN AREA
Federal Building
641 Washington Street
New York City

CAnal 6-2100
June 8, 1934.

Samuel Schechter
991 Rockaway Ave.
Brooklyn, N. Y.

Dear Sir;

Our records indicate that we have not received your weekly report and assessment for the period ending: May 5, 12, 19, 26, and June 2, 1934.

Defendants' Exhibit E 4837

This is in violation of the Code and you are directed to have these reports, together with your remittance in this office on or before Tuesday June 12, 1934.

Your failure to comply with this request will warrant me taking such action as may be necessary under the Code.

Yours very truly,

LEROY PETERSON
LEROY PETERSON 4838
Code Supervisor.

Defendants' Exhibit E

Slaughterhouses near the A. L. A. Schechter Poultry Corp. 858 E. 52nd St. Brooklyn.
David Hirschon—301 Powell Street
Logan St. Brooklyn L. P. Mkt Inc. 873 Liberty Ave.
Williams L. P. Co Inc. (Mintz)—274 Belmont Ave. 4839
Harry Rubin 44 Berriman St.
Harnett & Sons, Inc. 427 Hegeman Ave.
Lena Kaslaw 276-273 Junius St.
Franzel Bros. Inc. 457 Thatford Ave.
Jennie Block 778 Stone Ave.
Morris Gordon 407 Hegeman Ave.
Prospect Poultry Co. Inc. 1737 Prospect Place
A. L. A. Schechter P. Corp. 858 East 52nd St.

Defendants' Exhibit F

Assessment slip. Submitted without printing.

4840

Defendants' Exhibit G

A sheet book. Submitted without printing.

Defendants' Exhibit H

A salesbook. Submitted without printing.

Defendants' Exhibit I

4841

Two charge books. Submitted without printing.

4842

ACCOMMODATION SALE FOR JOSEPH SCHECHTER FROM A. L. A. SCHECHTER L. P. CORP.

		Fowl	P.R.	Amt.	Br.	P.R.	Amt.
May	21				167	23	38 41
	23	909	14²	131 81			
	24				511	24	122 64
	25				160	25	40 —
	31	128	13²	17 28			
	—	1866	16	298 56			
June	4				31²	26	8 19
					259	24	62 16
					380	21	79 80
	5	382	16	61 12	202	26	52 52
	8	1368		191 52			
	8	926	14	129 64			
		5579			1710		
		1710					
		7289					

Goldstein	167	23	38 41
Feinstein	4162	14²	603 49
Chelsea	511	24	122 64
Goldstein	1294	25	323 50
Resard & Roli	6866	16	1098 56
Frankel	357	26	92 82
Chelsea	259	24	62 16
	380	21	79 80
	202	26	52 52
Bklyn Chelsea	382	16	61 12
Chelsea	3053	14	427 42
Total	435 89		

ACCOMMODATION SALE FOR MOGEN DAVID L. P. CORP. FROM A. L. A. SCHECHTER L. P. CORP.

		Fowl	P.R.	Amt.	Br.	P.R.	Amt.	Dz.	P.R.	Amt.	Commission Merch.	A. L. A. Purchases		
pril	26				168	24	40 32				Goldstein Comm.	2437	24	581 46
	28	686	17	116 62	202	23	46 46				Acme Comm.	2663	17	452 71
	30				179	22	39 38				P. Feinstien	1163	23	267 49
lay	1				347	21²	74 61				D. Danziger Comm.	889	22	195 58
	3	842	17	143 14							Krauker Comm.	2224	21²	478 16
	—	1135	17	192 95							J. Kastien Comm.	1507	17	256 19
	—	879	16²	145 04							P. Feinstien Comm.	15828	17	2690 76
	—							181²	14	25 34	Brooklyn Comm.	7609	16²	1260 43
	4				106	20	21 20	95²	—	13 37	Louis Basco	661	14	92 64
	5	871	16	139 36	169	21¼	36 76	83²	—	11 62	Louis Basco	661	14	92 64
											Louis Basco	661	14	92 64
											P. Feinstien Comm.	3264	16	522 24
											Goldstein Comm.	1053	21¼	229 03
	7	415	15²	64 33	164	23	37 72				Berkshire L. P.	2055	15²	318 52
	8	409	15	61 35							M. Garlick & Sons	1459	23	335 57
	10	784	14	109 76							J. Kastien Comm.	5273	15	790 95
											Garlick Comm.	784	14	109 76
	12	1047	16	167 52	164	22	36 08				P. Feinstien Comm.	1047	16	167 52
											Chealse Comm.	657	22	144 54
	14	858	15²	132 99	167	21²	35 91				S. Frankel Comm.	4592	15²	727 37
	16	444	16	71 04				368	17	62 56	Garlick Comm.	1505	17	255 85
											Brooklyn Comm.	2575	16	412 00
	17	1024	15	153 60	323	23	74 29				P. Feinstien Comm.	5487	15	823 05
											Chealse Comm.	650	23	149 50
	—	984	15	147 60	1071	15	160 65				J. Kastein Comm.	5273	15	790 95
											Garlick Comm.	2007	15	301 05
											P. Feinstein Comm.	3212	15²	497 86

	18	1039	15²	161 05	339	23	77 97				Frankel Comm.	1257	23	289 11
	21				166	23	38 18				Frankel Comm.	168	23	000
														38 18
											" "	7955	15	1193 25
					168	23	38 64				" "	168		38 64
	22	1118.	15	167 70	174	20	34 80				Goldstein Comm.	174		34 80
	23				165	22²	37 13				Goldstein Comm.	992	22²	223 20
	24	135	15	20 25							Frankel Comm.	135	15	20 25
	—	930	14²	134 85							P. Feinstein Comm.	4162	14²	603 49
											S. Frankel Comm.	1972	14¼	281 01
												166	25	41 50
	25	1972	14¼	281 01	166	25	41 50	477	25	119 25	Goldstein Comm.	477	25	119 25
	25	956	17	162 52							Chealse Comm.	6977	17	1135 29
		1088		174 08								1088		174 08
June	6	1968	16	314 88							Chealsea Comm.	1968	16	314 88
		1449		231 84										
May	31	3545	16	567 20	343	14²	49 74				Risser & Rabinowitz	6866	16	1098 56
June	2	600	14	84 —							Brooklyn Comm.	2258	14	316 12
					200	21	42 —					200	21	42 —
June	4				127	24	30 48				Chealse Comm.	127	24	30 48
											S. Frankel Comm.	514	21	107 94
		574	16	91 84	158	21	33 18					574	16	91 84
June	5	177	14	24 78	178	26	46 28				Chealse Comm.	177	14	24 78
											Chealse Comm.	992	15²	153 76
June	7	992	15²	153 76	360	26²	95 40				Brooklyn Comm.	360	26²	95 40
											Chealse Comm.	3053	14	427 42
					334	25	85 17					334	25	85 17
June	8	948	14	132 72	166	21	34 86				Garlick Comm.	166	21	34 86
											Acme Comm.	5870	14²	826 59
June	11	987	14²	143 12	167	21²	35 91				Chealse Comm.	167	21²	35 91
		28854			6271			1175²						

4852

Defendants' Exhibit K

JOINT INSPECTION SERVICE ON
LIVE AND DRESSED POULTRY

New York City, 6-2-34

Schechter Bros., Applicant
991 Rockaway Ave.,
Brooklyn, N. Y., Address

For inspection of live or ——— poultry.

4853

		Fee
Express Poultry from 5-28-34 to 6-2-34 incl.		
5-28-34	65 baskets—Wallabout Mkt	4.00
5-30-34	105 baskets—Wallabout Mkt 3 times regular charge	9.00
5-30-34	86 baskets—Wallabout Mkt 3 times regular charge	9.00
5-30-34	90 baskets—Wallabout Mkt 3 times regular charge	9.00
	346	$31.00

4854

This fee is payable *at once* by money order, check or draft to

JOINT INSPECTION SERVICE ON LIVE POULTRY
Care of Manufacturers' Trust Co.
14th Street and 8th Avenue, New York City

4855

Defendants' Exhibit L

30

MANUFACTURERS TRUST COMPANY

1-30

1528 Pitkin Avenue

Brooklyn, N.Y. June 21 1934

Pay to the Order of Jack Damsky $20.65/100
Twenty 65/xx Dollars.

No.....

4856

MOGEN DAVID LIVE POULTRY MKT. INC.
D SCHECHTER Prs

[BACK OF CHECK]

Jack Damsky

Schechters L P Mkt

Received Payment
Endorsements Guaranteed
Jun 22 1934
Manufacturers Trust Company
1574 Pitkin Ave., Brooklyn, N. Y.

4857

[PERFORATED]

Paid
6 22 34

7

4858 **Petition of Appeal**

DISTRICT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

against

4859 JOSEPH SCHECHTER, MARTIN SCHECHTER, ALEX SCHECHTER, AARON SCHECHTER, A. L. A. SCHECHTER POULTRY CORPORATION, and SCHECHTER LIVE POULTRY MARKET, INC.,

Defendants.

NAMES AND ADDRESSES OF APPELLANTS:

Joseph Schechter, 257 Brighton Beach Ave., Brooklyn, N. Y.

4860 Martin Schechter, 412 Ralph Avenue, Brooklyn, N. Y.

Alex Schechter, 412 Ralph Avenue, Brooklyn, N. Y.

Aaron Schechter, 412 Ralph Avenue, Brooklyn, N. Y.

A. L. A. Schechter Poultry Corporation, 858 East 52nd Street, Brooklyn, N. Y.

Schechter Live Poultry Market, Inc., 991 Rockaway Avenue, Brooklyn, N. Y.

NAME AND ADDRESS OF APPELLANTS' ATTORNEY:

Joseph Heller, 51 Chambers Street New York City.

4861

OFFENSES:

Conspiracy to violate the National Industrial Recovery Act and the Code of Fair Competition for the Live Poultry Industry of the Metropolitan Area of New York.

Violation of the practices contained in the Code of Fair Competition for the Live Poultry Industry for the Metropolitan Area.

Date of Judgment: November 9th, 1934.

Guilty on Counts 1, 2, 4, 5, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 38, 39, 46, 55 and 60.

4862

SENTENCE:

Joseph Schechter—Three months and One Thousand ($1,000.00) Dollars fine on Counts 1. Three Hundred ($300.00) Dollars, totals fine on Counts 27, 28 and 39.

Martin Schechter—One Month and $500.00 fine on Count 1. Sixteen Hundred ($1600.00) Dollars total fine for Counts 2, 4, 5, 24, 25, 26, 29, 30, 31, 32, 33, 38, 39, 46, 55 and 60.

Alex Schechter—Two months and Five Hundred ($500.00) Dollars fine on Count 1. One Thousand ($1000.00) Dollars total fines for Counts 4, 5, 25, 31, 32, 33, 39, 46, 55 and 60.

4863

Aaron Schechter—One month and Five Hundred ($500.00) Dollars fine on Count 1, and a total of Fifteen Hundred Dollars ($1500.00) fine for Counts 2, 4, 5, 24, 25, 26, 29, 30, 31, 32, 33, 39, 46, 55 and 60.

A. L. A. Schechter Poultry Corporation—$25.00 fine on each of the following Counts: 1, 2, 4, 5, 24, 25, 26, 29, 30, 31, 32, 33, 38, 39, 46, 55 and 60, making a total of $425.

4864 Schechter Live Poultry Market, Inc.—$25 fine on each of the following counts: 1, 27, 28 and 39, making a total of $100. Defendants out on bail.

WE, THE ABOVE-NAMED APPELLANTS, hereby appeal to the United States Circuit Court of Appeals, for the Second Circuit, from the judgment above-mentioned on the grounds set forth below.

GROUNDS FOR APPEAL:

4865 1. The law under which the indictment was found is unconstitutional on the grounds specified in the demurrer which was overruled.

2. The facts set forth in the indictment fail to set forth a crime against the peace and dignity of the United States and in each and every Count under which the defendants were convicted, and fails to set forth a crime against the peace and dignity of the United States.

3. The Court failed to dismiss the indictment on the ground that there was not sufficient evi-
4866 dence and/or substantial competent evidence in the record to justify the submission of the issues to the Jury.

4. On the ground that the Government failed to establish conspiracy.

5. On the ground that the fines are excessive.

6. On the ground that the verdict is contrary to the evidence, contrary to law, against the weight of evidence.

7. On the ground that the motion for a Bill of Particulars was denied to the defendants before trial.

8. On the ground that there is no proof establishing that an offense existed against the United States of America.

9. On the ground that the defendants' guilt was not established beyond a reasonable doubt.

10. On the ground that there was no intent to commit any crime against the United States.

11. On the ground that the defendants' conduct did not affect inter-state commerce.

4868

12. On the ground that the Court inadequately charged the Jury as to what is meant by the words "affecting inter-state commerce."

13. On the ground that the Jury did not adequately understand the issues involved in the case.

14. On the ground that the defetndants never intended to unlawfully, feloniously and wilfully do the acts complained of in the indictment.

15. On the ground that some of the New York City ordinances were not pleaded in the indictment. 4869

16. And on all of the exceptions taken during the trial.

JOSEPH SCHECHTER,
MARTIN SCHECHTER,
ALEX SCHECHTER,
AARON SCHECHTER,
A. L. A. SCHECHTER
POULTRY CORPORATION,
SCHECHTER LIVE POULTRY
MARKET, INC.

Dated: November 9th, 1934.

4870

Assignments of Error

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

against

JOSEPH SCHECHTER, MARTIN SCHECHTER, ALEX SCHECHTER, AARON SCHECHTER, A. L. A. SCHECHTER POULTRY CORPORATION, and SCHECHTER LIVE POULTRY MARKET, INC.,

Defendants.

4871

AND NOW COMES the defendants, Joseph Schechter, Martin Schechter, Alex Schechter, Aaron Shechter, A. L. A. Schechter Poultry Corporation and Schechter Live Poultry Market, Inc., by their attorney, Joseph Heller, and make and file the following assignments of error, re-

4872 spectfully showing that the District Court erred in each of the following respects:

ASSIGNMENT OF ERROR No. 1

The Court erred in overruling the demurrer as to Counts 1-5 inclusive, 24-39 inclusive, 41-60 inclusive, on the grounds stated in the demurrer (Record, pp. 126 and 129).

ASSIGNMENT OF ERROR No. 2

The Court erred in denying the defendants' motion for a Bill of Particulars as to the demands enumerated in the notice of motion for a Bill of Particulars (Record, p. 165).

4873

ASSIGNMENT OF ERROR No. 3

The Court erred in refusing to direct a verdict of acquittal and for a direction of a verdict of not guilty in favor of the defendants, the defendants having moved for such a direction on the part of the Court at the close of the Government's case, on all the grounds stated upon the making of the said motion, as well as the grounds set forth in the demurrer, to which ruling of the Court, an exception was duly noted (S. M. pp. 1067, 1068, 1069 and 1070).

4874

ASSIGNMENT OF ERROR No. 4

The Court erred in refusing to direct a verdict of acquittal and for a direction of a verdict of not guilty in favor of the defendants, the defendants having moved for such a direction on the part of the Court at the close of the entire case, on all the grounds stated upon the making of the said motion, to which ruling of the Court, an exception was duly noted (S. M. pp. 1549, 1550 and 1551).

4875

ASSIGNMENT OF ERROR No. 5

The Court erred in denying the motion of the defendants to set aside the verdict to which ruling of the Court, an exception was duly taken (S. M. pp. 1639, 1640, 1641).

ASSIGNMENT OF ERROR No. 6

The Court erred in overruling the defendants' motion in arrest of the judgment, to which ruling, an exception was duly taken (S. M. pp. 1639-40).

4876 *Assignments of Error*

ASSIGNMENT OF ERROR No. 7

The Court erred in entering the judgment against the defendants upon the verdict in this case.

ASSIGNMENT OF ERROR No. 8

The judgment of the Court in sentencing the defendants under all counts of the indictment was contrary to the law (S. M. pp. 1642-1643).

4877

ASSIGNMENT OF ERROR No. 9

The Court erred in reading the indictment to the Jury (S. M. pp. 1554-1623, inclusive).

ASSIGNMENT OF ERROR No. 10

The Court erred in denying the motion of the defendants to dismiss the entire indictment and each and every separate Count thereof on the ground that there was not sufficient evidence to warrant the Jury in finding the defendants guilty of the crime charged in the indictment or any Count therein contained, beyond a reasonable
4878 doubt, said motions having been made at the conclusion of the Government's case and at the conclusion of the entire case and in arrest of the judgment to which rulings of the Court an exception was duly noted (S. M. pp. 1067, 1068, 1069, 1070, 1549, 1550, 1551 and 1639).

ASSIGNMENT OF ERROR No. 11

The Court erred in refusing to charge as requested by the defendants' counsel as follows:

> "May it please your Honor, I except to so much of your charge as does not adequately explain to the Jury what is

meant by affecting interstate commerce. I ask Your Honor to charge that the indictment as you read it states that the defendants' conduct in each particular count alleged, tended to and did diminish the total volume or value of the commerce that comes into the State, that their particular conduct disrupted the orderly flow thereof and diminished and demoralized the character thereof, and unless the Jury finds that their conduct did such a 4880
thing, their acts did not affect interstate commerce."

"The Court: I have already charged them. I read it at very great length, the whole indictment. I told them that the charge in the indictment is what the Government is required to prove and asked the Jury to determine whether the Government has proved its case. I am not going to charge separate parts. I made that charge plain and distinct, and I think the Jury understood it. I read the whole 4881
of the first count too.

Mr. Heller: Exception" (S. M. pp. 1623-1624).

ASSIGNMENT OF ERROR No. 12

The Court erred in refusing to charge as requested by the defendants' counsel as follows:

"I ask your Honor to charge that what I just said applied to each particular count separately; they must be considered separate and apart.

The Court: Let me see it. I cannot them at very great length. Each count,

4882 of course, depends upon the acts affecting interstate commerce. I find no necessity for further charging the Jury.

Mr. Heller: Exception" (S. M. p. 1624).

ASSIGNMENT OF ERROR No. 13

The Court erred in refusing to charge as requested by the defendants' counsel as follows:

"I also ask your Honor to charge the
4883 Jury that the Jury must find that on or about May 16th, a conspiracy was entered into between these defendants——

The Court: I thought there was a more inclusive provision, that between certain dates.

Mr. Heller: Just May 16th, on or about.

The Court: Well, they did not have to do it on that day. On or about May 16th, is the beginning of the conspiracy, as I remember it. What is your clause?

4884 Mr. Heller: Page 7.

The Court: Let me see it. I cannot carry this all in head.

Mr. Heller: Page 7.

The Court: On or about May 16th, 1934, and continuously thereafter—the conspiracy is alleged to have been formed May 16th—up to and including the date of the filing of the indictment. So that would mean that the conspiracy would have had to be formed before the commission of the overt acts. I instructed the Jury on that at great length. I am afraid we confused it——" (S. M. pp. 1624-1626).

ASSIGNMENT OF ERROR No. 14

a.

The Court erred in his charge to the Jury in the use of language which could not be understood by twelve ordinary citizens from the ordinary walk of life.

b.

The Court erred in using legalistic language instead of language understandable by laymen in his charge to the Jury. 4886

c.

The Jury could not comprehend the issues of the case in that to do so it was necessary for the Judge to adequately define the words "commerce, interstate commerce, intra-state commerce, affecting interstate commerce, overt acts, vitalizing the conspiracy."

ASSIGNMENT OF ERROR No. 15

The Court erred in failing to inform the Jury with which particular count each of the defendants were charged (S. M. pp. 1554-1623). 4887

ASSIGNMENT OF ERROR No. 16

The Court erred in accepting a verdict which was not a true and unanimous verdict of the Jury (S. M. pp. 1631-1639).

ASSIGNMENT OF ERROR No. 17

The Court erred in refusing to permit proper inquiry by defendants' counsel in polling the Jury (S. M. p. 1638).

ASSIGNMENT OF ERROR No. 18

The Court erred in coercing the Jurors to ad-

4888 here to the verdict as announced by the foreman as follows:

"The Clerk: James Roxby.

Mr. Roxby: As given, with one proviso, that on that count 1, the principal count, we found him guilty on one section of that item.

The Court: No; you find him guilty on the count.

Mr. Roxby: The last one, I think it is
4889 Section I, that has not been read, and I would like to put it in; otherwise the list as read is complete.

The Court: You said you agreed on a verdict. If you have not agreed, why, I want to know it. You said you agreed upon a verdict. The verdict on the first count was announced as guilty. Is it or is it not? Have you or have you not agreed?

The Foreman: We have agreed guilty on Count 1.

4890 Mr. Roxby: Well——

The Clerk: Mr. Roxby, how do agree as to the verdict on the first count, guilty or not guilty?

Mr. Roxby: Guilty under those conditions that I have stated.

The Court: Now, guilty or not guilty? You came in and said you had agreed upon a verdict. Have you agreed or haven't you?

Mr. Roxby: We nave agreed.

The Court: Then what do you find, guilty or not guilty, on that count?

Mr. Roxby: Guilty; otherwise as read.

The Court: Is that your verdict? Your verdict is guilty on the first count?

Mr. Roxby: That is my verdict.

Mr. Baumgarten: If he is guilty on this charge (i), does that consider the entire——

The Court: The count is presented. You said you agreed on a verdict. Now, if you have not agreed on it, and if you have agreed on the others, we will send you back on that.

4892

Mr. Heller: I think the Jury did not understand Count 1. They may require further instructions.

The Court: They did not ask for it and you are not in position to ask for it. Have you agreed on that or have you not?

Mr. Roxby: Yes, sir.

The Clerk: Samuel Blank.

Mr. Blank: As given.

The Clerk: Joseph Sommers.

Mr. Sommers: As given.

4893

The Clerk: Noel Andrews.

Mr. Andrews: As given.

The Court: Now there is no doubt about it, you have agreed on a verdict of guilty on the first count, that is right, is it?

(Several jurors answered 'yes.')

The Court: No doubt about that? That is the verdict?

The Foreman: That is the verdict.

The Court: You gentlemen in the back, that is your verdict, guilty, that is, the seventh and the ninth? That is correct, is it?

Mr. Roxby: Correct.

Mr. Baumgarten: Yes, sir.

The Court: Then there is no question" (S. M. pp. 1637, 1638 and 1639).

ASSIGNMENT OF ERROR No. 19

The Court erred in charging the Jury as follows:

"You understand here that there has been much which has been enumerated, as the Government has charged. The Government has called witnesses, you have heard those witnesses testify, and those witnesses testified that the things here enumerated affected interstate commerce; that class of acts had its effect and did affect interstate commerce. Some of those men were economists. One of them in particular claimed to be an expienced man in addition to his qualifications as an economist. They testified at length" (S. M. p. 1583).

ASSIGNMENT OF ERROR No. 20

The Court erred in charging the Jury as follows:

"Of course, it is not the size of the act that is controlling, because the offense may be large or the offense may be small. The question is whether the acts affect interstate commerce in a large way or a small way" (S. M. p. 1584).

ASSIGNMENT OF ERROR No. 21

The Court erred in charging the Jury as follows:

"That thing is knowingly done when you know the nature and the consequence of the act which you are performing; that thing is unlawful which the law says you shall not do; that thing is felonious which is in disobedience of the law in a substantial way, tending to felonious action" (S. M. p. 1585).

ASSIGNMENT OF ERROR No. 22

The Court erred in charging the Jury as follows: 4898

"The provisions in question referred to the alleged sales of poultry unfit for human consumption, violation of provisions for straight killing, anti-racketeering, filing of false reports, failure to file reports, payment of less than minimum wages allowed to employees, causing or permitting employees to work excessive hours, as well as persons not having permits to operate slaughterhouses. Do the provisions of the Code, or any of 4899 them alleged in the substantive counts to have been violated by any of the defendants, affect interstate commerce? You have heard the evidence. The Government has brought its witnesses here. They have told you that such acts do affect interstate commerce. There is no need of going over all the evidence. You have heard it" (S. M. p. 1609).

ASSIGNMENT OF ERROR No. 23

The Court erred in charging the Jury as follows:

4900 *Assignments of Error*

"It is not material whether the poultry was or was not at the time alleged in any of the several counts actually moving in interstate commerce" (S. M. p. 1611).

ASSIGNMENT OF ERROR No. 24

The Court erred in charging the Jury as follows:

4901 "Good character sometimes, in some classes of cases, in sufficient to raise reasonable doubt, but good character must not be considered alone and to the exclusion of all other evidence" (S. M. p. 1621).

ASSIGNMENT OF ERROR No. 25

The Court erred in receiving the Government's Exhibit 7, in evidence, over the objection that the materiality of it has not been shown (S. M. p. 50).

4902 ASSIGNMENT OF ERROR No. 26

The Court erred in receiving Government's Exhibits 8, 9 and 10, in evidence, over the objection of defendants' counsel that the materiality of the same has not been shown (S. M. p. 51).

ASSIGNMENT OF ERROR No. 27

The Court erred in receiving Government's Exhibit 12 in evidence, over the objection of the defendants' counsel that the materiality of it has not been shown (S. M. p. 54).

4903

ASSIGNMENT OF ERROR No. 28

The Court erred in receiving Government's Exhibit 13, in evidence, over the objection of defendants' counsel that the materiality of it has not been shown (S. M. p. 55).

ASSIGNMENT OF ERROR No. 29

The Court erred in receiving Government's Exhibit 15, in evidence, over the objection of defendants' counsel on the ground that it was not material, not within the issues, and not subject of any of the counts of the indictment (S. M. p. 65).

4904

ASSIGNMENT OF ERROR No. 30

The Court erred in permitting witness Ives to testify about rules and regulations of the Secretary of Agriculture over the objection and exception of defendants' counsel (S. M. pp. 66, 67 and 68).

ASSIGNMENT OF ERROR No. 31

4905

The Court committed error in receiving Government's Exhibit 16 in evidence, over the objection of defendants' counsel on the ground that the rules, regulations and instructions were not pleaded in the indictment (S. M. p. 69).

ASSIGNMENT OF ERROR No. 32

The Court erred in permitting a copy of each section of the Sanitary Code of the Health Department in evidence, over the objection and exception of counsel on the ground that the same has not been pleaded in the indictment (S. M. pp. 70, 72).

4906 *Assignments of Error*

ASSIGNMENT OF ERROR No. 33

The Court erred in permitting Government's witness Ives to testify as to the communicability of disease over the objections and exceptions of counsel for the defendants, as the same tended to prejudice the minds of the Jurors (S. M. p. 79).

ASSIGNMENT OF ERROR No. 34

4907 The Court committed error in permitting Government Witness Tottis, to testify as to conditions in the live poultry industry prior to the year 1926, over the objection and exception of counsel for defendants (S. M. pp. 149-150).

ASSIGNMENT OF ERROR No. 35

The Court erred in permitting Witness Tottis, to testify as to the practice of giving weight allowance in lieu of culls over the objection and exception of defendants' counsel (S. M. p. 153).

ASSIGNMENT OF ERROR No. 36

4908 The Court committed error in permitting Witness Tottis to testify as to what the economic effect upon the poultry industry is as a result of the selling of culls in the New York Market, over the objection of counsel for the defendants (S. M. p. 1556).

ASSIGNMENT OF ERROR No. 37

The Court committed error in permitting Witness Tottis to draw inferences not based upon facts as to the effect of the cost of the operation of a slaughterhouse upon the profit in the sale of chickens, over the objection and exception of defendants' counsel (S. M. p. 172).

ASSIGNMENT OF ERROR No. 38

The Court erred in permitting Witness Tottis to testify that the practice of paying less wages affects the price structure in the live poultry industry in New York City (S. M. p. 174).

ASSIGNMENT OF ERROR No. 39

The Court erred in permitting Witness Tottis to testify as to the effect the practice of requiring employees to work forty-eight hours would have on the price structure, over the objection 4910
and overruling of defendants' counsel (S. M. p. 174).

ASSIGNMENT OF ERROR No. 40

The Court erred in permitting Witness Tottis to testify as to the chaotic condition of the poultry industry over the objection of defendants' counsel (S. M. p. 264).

ASSIGNMENT OF ERROR No. 41

The Court erred in permitting Witness Tottis 4911
to give general opinions as to the effect of the Code of Fair Practice for Poultry Industry in the Metropolitan Area of the City of New York, and as to the economic conditions of the industry as they existed in 1926 to the day of trial, without said witness being properly qualified all of which tended to and did prejudice the Jury against the defendants herein (S. M. pp. 115-180 inclusive).

ASSIGNMENT OF ERROR No. 42

The Court erred in permitting Witness Termohlen to testify about an instance of an outbreak of diseases in the poultry business in the

year 1925, over the objection and exception of the defendants' attorney, all of which tended to prejudice the Jury against the defendants herein (S. M. p. 301).

ASSIGNMENT OF ERROR No. 43

The Court erred in permitting the Government to offer into evidence, ordinances of the City of New York, which were not pleaded in the indictment over objection and exception of de-
4913 fendants' counsel (S. M. pp. 306, 307 and 308).

ASSIGNMENT OF ERROR No. 44

The Court erred in permitting the Government to ask questions phrased as statements over the objections of counsel for the defendants (S. M. p. 310).

ASSIGNMENT OF ERROR No. 45

The Court erred in forcing the attorney for the defendants to ascertain the qualifications of Witness Termohlen as an economist (S. M. p.
4914 312).

ASSIGNMENT OF ERROR No. 46

The Court erred in permitting Witness Termohlen to testify as an Economist over the objection and exception of counsel for the defense (S. M. p. 319).

ASSIGNMENT OF ERROR No. 47

The Court erred in permitting Witness Termohlen to testify as to the conditions that existed from the year 1926 to the date of the indictment on the ground that he was not prpoerly

qualified, on the ground that his opinions were guesses and were not founded on facts and the testimony tended to and did prejudice the Jury against the defendants (S. M. pp. 319-322).

ASSIGNMENT OF ERROR No. 48

The Court erred in permitting Witness Termohlen, over objection and exception of counsel for the defendants to testify as follows:

"Q. And what effect does that have upon the commission man's dealings with the interstate shipper? A. He tells the man in that country, 'You can get away with this kind of stuff; ship it in to me. You can take advantage of your competitor.' 4916

Q. Is a substantial amount of unfit poultry shipped in interstate channels as a result of this cycle?" (S. M. pp. 324, 325 and 326).

ASSIGNMENT OF ERROR No. 49

The Court committed error in accepting Exhibit 37, in evidence, over objection and exception of counsel for defendants (S. M. pp. 337-338). 4917

ASSIGNMENT OF ERROR No. 50

The Court committed error in permitting leading questions to be asked by Government Counsel throughout the entire trial.

ASSIGNMENT OF ERROR No. 51

The Court erred in refusing to accept in evidence Bulletin #7, Manual for Adjustment of Complaints (S. M. pp. 504-505).

4918 *Assignments of Error*

ASSIGNMENT OF ERROR No. 52

The Court committed error in permitting Witness Peterson to testify as to the volume of business done by the industry since the adoption of the Code (S. M. p. 518).

ASSIGNMENT OF ERROR No. 53

The Court committed error in refusing to permit witnesses to testify as to the reasonableness of the Code requiring regulation straight killing
4919 (S. M. pp. 755-756, 1236, 1237, 1238 and 1256).

ASSIGNMENT OF ERROR No. 54

The Court committed error during the trial in permitting leading questions to be asked on the theory that the witness' memory had been exhausted, to the prejudice of the defendants.

ASSIGNMENT OF ERROR No. 55

The Court committed error in permitting Witness Cohen to testify as to the practice of sales of unfit chickens generally, without showing
4920 dates, without showing the connection the sales had with the counts in the indictment, all of which testimony was given with the purpose of prejudicing the minds of the Jury against the defendants (S. M. pp. 828-834).

ASSIGNMENT OF ERROR No. 56

The Court committed error in permitting Witness Danziger to testify as to the practice of selling unfit chickens generally, without showing dates, without showing the connection the sales had with the counts in the indictment, all of which testimony was given with the purpose of

prejudicing the minds of the Jury against the defendants (S. M. pp. 909-913).

ASSIGNMENT OF ERROR No. 57

The Court committed error in permitting Witness Danziger to make general statements with reference to the sale of diseased chickens by the defendants, all of which tended to prejudice the Jury against the defendants (S. M. pp. 907-908).

ASSIGNMENT OF ERROR No. 58 4922

It was error on the part of the Court to permit Government's counsel to characterize testimony, all of which tended to prejudice the minds of the Jury against the defendants (S. M. pp. 908-909).

ASSIGNMENT OF ERROR No. 59

The Court committed error in permitting Witness Galloway to compare the size of the defendants' establishments with other establishments (S. M. pp. 1043-1044).

4923

ASSIGNMENT OF ERROR No. 60

Error was committed in that Government Counsel persisted in placing before the Jury collateral issues, all to the prejudice of the defendants (S. M. pp. 1243, 1244, 1245 and 1247, 1305-1036).

ASSIGNMENT OF ERROR No. 61

The Court committed error in refusing a mistrial on the ground that Government counsel persisted in creating a prejudicial atmosphere about the defendants and the industry they were engaged in (S. M. p. 1335).

Assignments of Error

ASSIGNMENT OF ERROR No. 62

The Court committed error in refusing to permit Witness Schimmel to testify that he received goods, wares and merchandise as part of his pay (S. M. pp. 1379-1381).

ASSIGNMENT OF ERROR No. 63

The Court committed error in striking out witness Schimmel's testimony that he was not required to work more than forty-eight hours a week (S. M. p. 1386).

ASSIGNMENT OF ERROR No. 64

The Court committed error in permitting witness Justice to draw conclusions from the books in evidence, and in accepting such conclusions as evidence (S. M. pp. 1513, 1514, 1516 and 1527).

WHEREFORE, defendants, Joseph Schechter, Martin Schechter, Alex Schechter, Aaron Schechter, A. L. A. Schechter Poultry Corporation and Schechter Live Poultry Market, Inc., pray that the said judgment of the United States District Court, for the Eastern District of New York, may be reversed and held for nought.

Dated: New York, November 22, 1934.

JOSEPH HELLER,
Attorney for Defendants.

4924a

Stipulation Settling Bill of Exceptions

DISTRICT COURT OF THE UNITED STATES

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
against
JOSEPH SCHECHTER, MARTIN SCHECHTER, ALEX SCHECHTER, AARON SCHECHTER, A. L. A. SCHECHTER POULTRY CORPORATION, and SCHECHTER LIVE POULTRY MARKET, INC.,
Defendants.

4925a

IT IS HEREBY STIPULATED AND CONSENTED AND AGREED by and between the attorneys for the respective parties hereto, that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties and contains all the evidence taken on the trial of this action. That the same has been prepared within the time allowed by law and the Court, and that it may be settled and ordered on file as the Bill of Exceptions herein.

4926a

Dated, New York, January 5, 1935.

LEO J. HICKEY,
Attorney for Plaintiff-Appellee.

JOSEPH HELLER,
Attorney for Defendants-Appellants.

4924b

Order Settling Bill of Exceptions

DISTRICT COURT OF THE UNITED STATES

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

against

JOSEPH SCHECHTER, MARTIN SCHECHTER, ALEX SCHECHTER, AARON
4925b SCHECHTER, A. L. A. SCHECHTER POULTRY CORPORATION, and SCHECHTER-LIVE POULTRY MARKET, INC.,

Defendants.

Upon the stipulation of Joseph Helier and Leo J. Hickey, hereto annexed and dated January 5, 1935, it is

ORDERED, that the foregoing record be ordered on file as the Bill of Exceptions and Transcript of Record in the above-entitled matter.

4926b

Dated, New York, January 7, 1935.

MARCUS B. CAMPBELL,
United States District Judge,
Eastern District of New York.

4927

Stipulation and Order Waiving Printing of Exhibits

DISTRICT COURT OF THE UNITED STATES

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

against

4928

JOSEPH SCHECHTER, MARTIN SCHECHTER, ALEX SCHECHTER, AARON SCHECHTER, A. L. A. SCHECHTER POULTRY CORPORATION, and SCHECHTER LIVE POULTRY MARKET, INC.,

Defendants.

IT IS HEREBY STIPULATED AND CONSENTED by and between the United States Attorney for the Eastern District of New York, and the attorney for the defendants-appellants, that the printing of exhibits 1, 2, 3, 4, 5, 6, 15, 16, 17, 19, 20, 21, 26, 32, 33, 34, 35, 36, A, B, F, G, H, I, on the trial of the above-entitled cause not contained in this record be and the same hereby is waived and the said exhibits may be filed or presented by either side on the argument of the appeal herein with like force and effect as though physically reproduced in the record herein.

4929

It is further stipulated that the summaries or statements contained in this record in reference to such exhibits shall be considered to be ade-

4930 quate descriptions of said exhibits in the absence of filing or presenting them to the appellate court.

Dated, New York, January , 1935.

LEO J. HICKEY,
United States Attorney for the Eastern District of New York.

WALTER L. RICE,
Special Assistant to the
4931 Attorney General.

JOSEPH HELLER,
Attorney for Defendants-Appellants.

So ordered this day of January, 1935.

CAMPBELL,
U. S. D. J.

4932 J. of the C. C. A.

4933

Stipulation as to Record

DISTRICT COURT OF THE
UNITED STATES

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

JOSEPH SCHECHTER, MARTIN SCHECHTER, ALEX SCHECHTER, AARON SCHECHTER, A. L. A. SCHECHTER POULTRY CORPORATION, and SCHECHTER LIVE POULTRY MARKET, INC.,

Defendants.

4934

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties herein, that the foregoing (in three volumes) is a true and correct transcript of the record of proceedings of the said District Court in the above-entitled cause, as agreed upon by the parties.

4935

Dated, January, [illegible], 1935.

LEO J. HICKEY,
United States Attorney for the Eastern District of New York.

WALTER L. RICE,
Special Assistant to the Attorney General.

JOSEPH HELLER,
Attorney for Defendants-Appellants.

4936

Order as to Record

DISTRICT COURT OF THE UNITED STATES

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

against

4937 JOSEPH SCHECHTER, MARTIN SCHECHTER, ALEX SCHECHTER, AARON SCHECHTER, A. L. A. SCHECHTER POULTRY CORPORATION, and SCHECHTER LIVE POULTRY MARKET, INC.,

Defendants.

Upon the above stipulation, it is

ORDERED, that the foregoing printed record be filed for use by the Clerk of this Court in lieu of the original papers in certifying a record on

4938 appeal.

Dated, January , 1935.

MARCUS B. CAMPBELL,
U. S. D. J.

4939

Clerk's Certificate

DISTRICT COURT OF THE UNITED STATES

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

against

JOSEPH SCHECHTER, MARTIN SCHECHTER, ALEX SCHECHTER, AARON SCHECHTER, A. L. A. SCHECHTER POULTRY CORPORATION, and SCHECHTER LIVE POULTRY MARKET, INC.,

Defendants.

4940

I, PERCY G. B. GILKES, Clerk of the District Court of the United States of America, for the Eastern District of New York, do hereby Certify that the foregoing (in three volumes) is a correct transcript of the record of the said District Court in the above-entitled matter as agreed on by stipulation between the attorneys for the respective parties.

4941

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Eastern District of New York, this day of January, in the year of our Lord one thousand nine hundred and thirty-five, and of the independence of the said United States the one hundred and sixtieth.

PERCY G. B. GILKES.

(SEAL)

BAR PRESS, INC., 47 WEST STREET, NEW YORK. BO. 9 – 0157-8

[fol. 1648] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Respondent,

against

A. L. A. SCHECHTER POULTRY CORPORATION, SCHECHTER LIVE POULTRY MARKET, Joseph Schechter, Martin Schechter, Alex Schechter, and Aaron Schechter, Defendants-Appellants

Appeal from the United States District Court for the Eastern District of New York

Before Manton, L. Hand and Chase, Circuit Judges

The defendants were convicted of conspiracy to commit offense against the United States (18 U. S. C. § 88); and for violations of the National Industrial Recovery Act (48 Stat. 195); and the Code of Fair Competition for the Live Poultry Industry. Defendants appeal; affirmed in part and reversed in part.

Joseph Heller, Esq., Attorney for Appellants. Joseph Heller, Esq., Jacob E. Heller, Esq., of Counsel. Walter L. Rice, Esq., Special Asst. to the Atty. Genl.; Harold M. Stephens, Esq., Asst. Attorney General; Carl McFarland, Esq., Sp. Asst. to the Atty. Genl.; Henry W. Edgerton, Esq., Spec. Asst. to the Atty. Genl.; J. William Fulbright, Esq., Special Attorney; H. Stewart McDonald, Jr., Esq., Special Attorney, U. S. Dept. of Agriculture. Ray- [fol. 1649] mond J. Heilman, Esq., Assistant Counsel, Natl. Recovery Administration.

MANTON, Circuit Judge:

The appellants were convicted on 19 Counts of an indictment charging crimes in 60 counts. They were convicted of, (Count 1) conspiracy to commit offenses against the United States by violating the National Industrial Recovery Act and provisions of the Code of Fair Competition for the Live Poultry Industry of Metropolitan New York; (Count 2) violation of Art. VII, § 2 of the Code, prohibiting purchase or sale of poultry unfit for human consumption;

(Counts 4 and 5) violation of Art. VII, § 22, prohibiting the sale of poultry not inspected and approved in accordance with the ordinances and regulations of New York City; (Counts 24 to 33, incl.) violations of Art. VII, § 14, prohibiting the use of any method of slaughtering other than straight killing; (Counts 38 and 39) violations of Art. VIII, § 3, and Art. VI, §§ 1 and 2, requiring weekly reports on daily range of prices and volume of sales; (Count 46) violation of Art. IV, §§ 1 and 2, requiring a minimum wage of 50¢ per hour to be paid in lawful currency; (Count 55) violation of Art. III, § 1, providing a maximum of 48 hours per week for slaughterhouse employees; and (Count 60) violation of Art. VII, § 15, prohibiting the sale of live poultry to any person not licensed as required by the New York City ordinances and New York City Board of Health rules and regulations.

Appellants are wholesale market-men engaged in the poultry business in the Borough of Brooklyn, New York [fol. 1650] City. Their purchases were ordinarily made in the market in New York City, but sometimes in Philadelphia, Pa. The poultry bought by them is taken directly to their slaughterhouse markets and sold to retail dealers within 24 hours. The shares of stock of the corporations named in the indictment were owned, and the corporations controlled by the individual appellants.

The evidence at the trial established to the satisfaction of the jury that the poultry industry in the New York City area was beset with evil trade practices. The New York City market is the largest in the country and dominates the industry. In 1930, sales of 224 million pounds of poultry were made in New York City; in 1933, 190 million pounds were sold. This large volume, with the consequent market domination, places New York City in the position of being the medium by which prices for poultry throughout the country are measured. The markets in other large cities, as Chicago and St. Louis, maintain their prices in accordance with those current in New York, the difference being determined by the cost of freight and handling, and as to whether the poultry is coming from the west to the east, or the south to the north, the direction of flow depending upon the season. The farmer's price reflects the price current in the New York market, so that the demoralization of price structure in New York produces a similar situa-

tion, not only in other markets throughout the country, but also in all poultry farming areas. It reduces the price received by the interstate shipper and by the farmer. To [fol. 1651] the farmer, poultry is a cash, as distinct from a seasonal, crop. He sells day by day for cash, and this provides the means for purchasing current supplies, so that a cheap market for poultry entails a falling off in the daily purchases of the farmer. From 1927 to 1933, there was a decrease in the wholesale value of poultry sold of approximately 53%, or thirty million dollars. The price per pound was reduced from approximately 30¢ in 1929 to 14¢ in 1933.

The practices of selling below cost, selective killing, bringing in uninspected poultry from outside the State, selling poultry unfit for human consumption, making possible a ready market for diseased and inferior poultry, were assigned as evils resulting in loss in the volume of business. New York presented a market for diseased poultry, and the evidence shows that diseased poultry was shipped almost exclusively to New York. Live poultry is a perishable commodity, and the presence of a few diseased chickens in a car frequently infects the whole carload. Such poultry, when sold, is necessarily disposed of through misrepresentations as to its condition, and causes distrust and a reluctance to purchase on the part of consumers. The presence of diseased poultry in the market caused a demand because of its cheap price. It narrowed the price range because good poultry, which could otherwise sell at a high price, had to meet the competition of the diseased poultry and drop in price. The avoidance of poultry inspection was a relatively simple matter in New York, and this was a material circumstance in conditioning the shipment of unfit poultry to that market. Poultry cer- [fol. 1652] tain to be condemned in other markets because of its diseased condition, was shipped to New York. Lack of inspection requirements also induced fraudulent practices in the course of interstate shipment—such as overfeeding the poultry to increase its weight. The practice of selective killing, rather than straight killing, resulted in price cutting, and a lowering of prices received by the farmers and the interstate shippers. The control of prices by which poultry can be sold to the consumer is determined not only by the cost of the poultry but also by the wages paid to the employees in the poultry slaughterhouses.

The appellee argues that the payment of lower wages permits the employer to sell at a lower price than if he paid higher wages. Competition is thus affected. Lower wages resulted in price cutting which in turn affects interstate commerce. It was also established that sales by wholesale market-men to unlicensed operators, not subject to Health Department supervision, were a further cause of the industry's unfair practices. Such operators, being irresponsible and not disposed to make the necessary expenditures for the maintenance of sanitary places of business, sold at cut prices and initiated the sales of unfit poultry. There was evidence that these conditions brought about an industrial demoralization which, with all its adverse national consequences, needed correction and betterment. It is argued that no improvement was possible unless all the evil practices in the industry were controlled, and it was to accomplish this result that the Live Poultry Code for the Metropolitan area was adopted and approved. [fol. 1653] Congress had the power, under the Commerce Clause (Art. I, § 8[3]), to regulate transactions in interstate commerce, and its power also extends to all transactions which substantially burden or affect such commerce. Local 167 of the Teamsters Union v. United States, 291 U. S. 293; Thornton v. United States, 271 U. S. 414; United States v. Ferger, 250 U. S. 199; Minn. Rate Cases, 230 U. S. 352. And whenever an intrastate activity substantially and directly burdens or interfers with the free flow of interstate commerce, under the Commerce Clause, Congress had the power to remove the obstruction. Local 167 of the Teamsters Union v. United States, supra; Chicago Bd. of Trade v. Olsen, 261 U. S. 1. Interference "with the unloading, the transportation, the sales by market men to retailers, the prices charged, and the amount of profits exacted, operate substantially and directly to restrain and burden the untrammeled shipment and movement of the poultry while unquestionably it is in interstate commerce" (Local 167 Teamsters Union v. United States, supra). To the extent that the sale of unfit and uninspected poultry diverts healthy poultry from the New York market, and brings about the sale of inferior poultry, and demoralizes the price, this rule has application, for the burden is no less substantial and direct. Thornton v. United States, supra; Chicago Bd. of Trade v. Olsen, supra. In the Olsen case, the court said:

"The question of price dominates trade between the States. Sales of an article which affect the country-wide price of the article directly affect the country-wide commerce in it."

[fol. 1654] So the fraudulent shipment of inferior poultry in interstate commerce is sufficiently substantial and direct to warrant federal regulation. United States v. Ferger, supra. The power to legislate as to general trade practices merely affecting interstate commerce, though never so broadly exercised, was recognized in the earlier cases. Gibbons v. Ogden, 9 Wheat. 1; United States v. Standard Oil Co., 221 U. S. 1; United States v. Amer. Tobacco Co., 221 U. S. 106. Transactions or violations, which amount to more or less constant practice, and which threaten to obstruct or to unduly burden the freedom of interstate commerce, are within the regulatory powers of Congress under the Commerce Clause. Stafford v. Wallace, 258 U. S. 495; Brooks v. United States, 267 U. S. 432.

Congress stated in § 1 of the Recovery Act, that its purpose was to promote interstate commerce. The national economic emergency, hereinafter referred to, has made interstate commerce more sensitive than normally to unfair trade practices. Trade practices which in normal times would have had only an indirect and incidental effect upon interstate commerce, may substantially burden interstate commerce during a period of over production, unfair competition, and a reduced purchasing power. And, as pointed out, emergency does not create the power, but it may furnish the occasion for the exercise of the power conferred by the Constitution. Home Bldg. & Loan Asso. v. Blaisdell, 290 U. S. 398; Wilson v. New, 243 U. S. 332. The prohibition of the sale of unfit poultry in the state of destination when that state is the major market of the nation is an [fol. 1655] especially direct and appropriate means to protect interstate commerce from deception or spread of disease affecting it. Colorado v. United States, 271 U. S. 153; R. R. Comm. of Wisc. v. Chicago, B. & Q. Ry. Co., 257 U. S. 563.

Appellants contend that the Act as a whole, and § 3 thereof particularly, is unconstitutional in that it is an invalid delegation of legislative power by Congress to the President.

The Constitution provides that:

"All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." (Art. I, § 1.)

And further it provides that the Congress is empowered

"To make all laws which shall be necessary and proper for carrying into execution" all its general powers (Art. I, Sec. 8, (18)).

By the Recovery Act, Congress delegated to the President the power to approve various Codes of Fair Competition. The constitutional validity of this delegation of power is brought into question. Sec. 1, Title I of the Act contains a "Declaration of Policy", reading:

"A national emergency productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people, is hereby declared to exist. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for [fol. 1656] the purpose of cooperative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, and to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources."

Section 3 (a) (b) provides for Codes of Fair Competition, and their approval by the President, their conditions, restrictions and exemptions, and for the approval of the

Codes to have the effect of establishing standards of fair competition, as found in the margin.*

[fol. 1657] We think this was a lawful exercise of a lawfully delegated power. In Buttfield v. Stranahan (192 U. S. 470) the court said:

"We may say of the legislation in this case, as was said of the legislation considered in Field v. Clark, that it does not, in any real sense, invest administrative officials with power of legislation. Congress legislated on the subject

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* "(a) Upon the application to the President by one or more trade or industrial associations or groups, the President may approve a code or codes of fair competition for the trade or industry or subdivision thereof, represented by the applicant or applicants, if the President finds (1) that such associations or groups impose no inequitable restrictions on admission to membership therein and are truly representative of such trades or industries or subdivisions thereof, and (2) that such code or codes are not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of this title: Provided, That such code or codes shall not permit monopolies or monopolistic practices: Provided further, That where such code or codes affect the services and welfare of persons engaged in other steps of the economic process, nothing in this section shall deprive such persons of the right to be heard prior to approval by the President of such code or codes. The President may, as a condition of his approval of any such code, impose such conditions (including requirements for the making of reports and the keeping of accounts) for the protection of consumers, competitors, employees, and others, and in furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code, as the President in his discretion deems necessary to effectuate the policy herein declared.

"(b) After the President shall have approved any such code, the provisions of such code shall be the standards of fair competition for such trade or industry or subdivision thereof. Any violation of such standards in any transaction in or affecting interstate or foreign commerce shall be deemed an unfair method of competition in commerce * * *."

as far as was reasonably practicable, and from the necessities of the case was compelled to leave to executive officials the duty of bringing about the result pointed out by the Statute. To deny the power of Congress to delegate such a duty would, in effect, amount but to declaring that the plenary power vested in Congress to regulate foreign commerce could not be efficaciously exerted."

[fol. 1658] It has been often stated that the legislative powers vested in Congress by the Constitution must be exercised by Congress alone, and cannot be delegated to any other branch of the government. This proposition has been reannounced in Panama Refining Co. v. Ryan (U. S. Supreme Court, Jan. 7, 1935). It was there said:

"The Congress manifestly is not permitted to abdicate, or to transfer to others, the essential legislative functions with which it is thus vested."

The Court held that § 9(c) of the National Industrial Recovery Act which authorized the President to prohibit the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn in excess of state quotas, constituted an unconstitutional delegation of legislative power, and was, therefore, void. This decision was based upon the absence of any declaration of policy or standard of action and the fact that Congress required no findings to be made by the President in the exercise of the authority given him. The delegated authority was unconditional, the course of the President's action was governed by no criterion. So far as § 9(c) was

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"In pursuance of the authority vested in him by Congress through the above section, the President, on April 13, 1934, approved the Live Poultry Code. This was done after joint hearings conducted by the A. A. A. and the I. R. A. The Secretary of Agriculture, the Industrial Recovery Administrator and the President found that the provisions of the Code complied with all the standards set up by the N. I. R. A. The President, in his Executive Order of Approval of the Code, made special findings that the Code complied with all the provisions of Sec. 2(a) and the other pertinent sections, and that the Code "will tend to effectuate the policy of Congress as declared in section 1 of title I of the Act."

concerned, the court found that the policy was subject to the will of the President. The declaration of the policy, in § 1 of the act, contained no standard of action for § 9(c) and § 1 was "simply an introduction of the Act, leaving the legislative policy as to particular subjects to be declared and defined, if at all, by the subsequent sections."

But § 3(a) and (b) here considered is not subject to the same deficiencies. In Buttfield v. Stranahan (supra), an [fol. 1659] Act authorized the Secretary of the Treasury, upon the recommendation of a board, to "establish uniform standards of purity, quality, and fitness for the consumption of all kinds of teas imported into the United States." It was held constitutional because the court found that Congress had fixed a "primary standard", delegating to the Secretary of the Treasury only the duty to effectuate the declared legislative policy. In The Brig Aurora (7 Cranch. 382), it was held that Congress might make the revival of an Act depend upon an Executive Proclamation showing that the President had made certain findings. In Field v. Clark (143 U. S. 649), the court found that the "suspension of an act upon a contingency to be ascertained by the President, and made known by his proclamation", the suspension being "absolutely required when the President ascertained the existence of a particular fact", was not law making on the part of the President. The will of Congress was expressed, its exercise being dependent upon the declaration of the existence of a fact. In Mahler v. Eby (264 U. S. 32), an Act of Congress providing for the deportation of aliens found by the Secretary of Labor to be "undesirable residents", was held a constitutional delegation of legislative power. "Undesirable residents" was there found to have set up an adequate standard of action. In Hampton & Co. v. United States (276 U. S. 394), the President's authority to increase or decrease tariff duties when such action would serve "the public interest", was held constitutional. The court expressed the philosophy behind such delegation:

[fol. 1660] "Congress may feel itself unable conveniently to determine exactly when its exercise of the legislative power should become effective, because dependent on future conditions, and it may leave the determination of such time to the discretion of the executive."

In Radio Comm. v. Nelson Bros. Co. (289 U. S. 266), the Radio Act of 1927, which gave the Radio Commission authority to grant licenses "as public convenience, interest, or necessity requires", was considered. The court found a declaration of policy and the establishment of a standard by Congress, and that consequently the authority granted was not unlimited but was to be exercised in conformance with this standard.

The principle of these decisions is that without delegation the powers conferred upon Congress by the Constitution would often be incapable of exercise. Congress would be factually impotent. To deny the right to delegate, would be "to stop the wheels of government and bring about confusion, if not paralysis, in the conduct of the public business." Union Bridge Co. v. United States, 204 U. S. 364. This principle was reannounced in the Panama Refining Co. case (supra), the court saying:

"Undoubtedly legislation must often be adapted to complex conditions involving a host of details with which the national legislature cannot deal directly. The Constitution has never been regarded as denying to the Congress the necessary resources of flexibility and practicability, which will enable it to perform its function in laying down policies and establishing standards, while leaving to selected instrumentalities the making of subordinate rules within pre-
[fol. 1661] scribed limits and the determination of facts to which the policy as declared by the legislature is to apply."

To be sure "there are limits of delegation which there is no constitutional authority to transcend". Panama Refining Co. case, supra. The limits are that Congress, and Congress alone, can declare the legislative policy, that it alone can point out the result to be accomplished. If such is done, it cannot be said that the delegation is unlawful. Hampton v. United States, supra. The delegated power, if confined within proper limits, if the circumstances calling for its exercise and restraint are adequately confined, is lawful. United States v. Shrevesport Grain Elevator Co., 287 U. S. 77; Home Bldg. & Loan Co. v. Blaisdell, 290 U. S. 398. It was the absence of this necessary declaration of policy, the erection of a standard and criterion, which rendered the attempted delegation of power in § 9 (c) of the National Industrial Recovery Act invalid in the Panama Refining Co. case, supra.

In the instant case, the authority delegated to the President, by § 3 (a) and (b) of the National Industrial Recovery Act is confined within constitutional limits. Looking to the statute to see whether Congress had declared a policy with respect to the subject, and whether it has set up a standard for the President's action, and whether Congress has required any finding by the President in the exercise of the authority, we find that § 3 (a) and (b) discloses all the requirements demanded by the principle expounded in the Panama Refining Co. case (supra). A policy is declared, standards set up, and the findings of [fol. 1662] fact required. The authorization to approve codes is dependent upon a finding that they "will tend to effectuate the policy" declared by the Act. The policy of the Act, though but broadly stated in § 1, is more specific throughout the Act. Congress desired to "reduce and relieve unemployment, to improve standards of labor", "to increase consumption * * * by increasing purchasing power." Section 4 (b) gives the President power to act where he finds "destructive wage or price cutting or other activities contrary to the policy" of the Act. Findings by the President were made a condition precedent to action by him, and specific provisions of limitation were declared. Not only were standards set up, but definite restrictions were placed upon the exercise of his delegated power. He was not himself to determine policies; there was no grant to the Executive of any roving commission to inquire into evils and then, upon discovering them, do anything he pleases.

That the standard is broad, that the limitations are not too confining, that the scope of power invested in the President is of great magnitude, is a necessary and essential factor if the results sought to be accomplished by Congress are to be attained. Congress desired that all business compete on a fair basis, and that obstructions to commerce be removed, that the productive capacity of our industries be more fully utilized, that the consumption of products be increased, and that industry be rehabilitated. The project, the complexity of conditions, presented a situation with which Congress was powerless to contend without delegating to some other department the power to attend to [fol. 1663] the innumerable details thereof.

Congress declared the emergency, declared its purpose and will, and gave to the President the power to exercise

the means deemed necessary by it to achieve the desired end. His power to approve Codes was, however, limited to those which he found (a) admitted equitably to membership in the association all those engaged in the same trade or industry; (b) were submitted by an association truly representative of the trade or industry; (c) would not oppress or discriminate against small enterprises; (d) would not promote monopolies; (e) would give employees the right to organize and bargain collectively; (f) would insure compliance by an employer with maximum hours of labor and minimum wages; and (g) would tend to effectuate the policy of the Act.

This section was an affective means of the Congressional exercise of its Constitutional functions. It was both flexible and practicable. The President was to make detailed regulations in conformance with the general standards in order that the Congressional purpose might be realized. Thus we have a valid delegation.

Error is assigned for the refusal to sustain the demurrer to Counts 4, 5 and 60 because ordinances and regulations of the City of New York therein referred to were not pleaded. Section 22 of the Code prohibits the sale of live poultry which has not been inspected and approved in accordance with the rules, regulations or ordinances of the particular area. These Counts deal with this subject without reference to the particular provisions of the City ordinances. Judicial notice may be taken of these provisions [fol. 1664] by the court. Martin's adm. v. B. & O. R. R., 151 U. S. 673; Kaye v. May, 296 Fed. 450. The poultry code which will be judicially noticed by this court (Thornton v. United States, supra) contemplates inspection in accordance with the Sanitary Code (§ 22). Since judicial notice is taken, it was unnecessary to plead such laws. Pennington v. Gibson, 57 U. S. 81.

Appellants argue that there is no evidence to warrant the conviction for conspiracy. Upon examination of the record it will be found that Count 1 of the indictment is amply supported. It warrants the conclusion that there was a concerted and deliberate plan on the part of the appellants to engage in the practice of selling poultry unfit for human consumption—to conceal such sales from the Code Authority, and to violate the other substantive Counts of the indictment for which they have been found guilty—sales of

unfit poultry; sales of uninspected poultry; violation of straight killing; failure to make sales reports; sales to persons not licensed.

The majority of the court are of the opinion that Count 46—violation of the Code provisions as to wages—and Count 55—as to hours per week for slaughterhouse employees—cannot be sustained. Each of the counts of this indictment must stand upon its own footing. These provisions of the Code forbade employment for more than 48 hours per week and required a minimum wage of 50¢ per [fol. 1665] hour. These Counts are invalid because they have no direct concern with interstate commerce. They were the wages paid at the slaughterhouses to employees not directly engaged in interstate commerce, the number of hours of labor per week and the wages paid cannot be said to affect interstate commerce; they may affect intrastate commerce. Therefore the conviction on Counts 46 and 55 are reversed. The evidence fully sustained the convictions on all the other counts of the indictment.

We have considered the other errors assigned and find no justification for reversal.

Reversed in part; affirmed in part.

Judge HAND concurs in separate opinion.

Judge CHASE concurs, and concurs in Judge Hand's opinion.

[fol. 1665½] [Endorsed;] United States Circuit Court of Appeals, Second Circuit. United States v. Schechter Poultry Corp. et al. (Copy.) Opinion. Manton, Circuit Judge.

[fol. 1666] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, Appellee,

against

A. L. A. SCHECHTER POULTRY CORP., SCHECHTER LIVE POULTRY MARKET, Joseph Schechter, Martin Schechter, Alex Schechter, and Aaron Schechter, Appellants

L. HAND, Circuit Judge (concurring):

I am one of the majority who think that counts 46 and 55 should be reversed, and the question at stake has enough

importance to justify a statement of my reasons. It is always a serious thing to declare any act of Congress unconstitutional, and especially in a case where it is a part of a comprehensive plan for the rehabilitation of the nation as a whole. With the wisdom of that plan we have nothing whatever to do; and were only the Fifth Amendment involved I should be prepared to read the powers of Congress in the broadest possible way. Moreover, the phrase, "fair competition", seems to me a definite enough cue or ground plan for the elaboration of a code. Federal Trade Commission v. Keppel, 291 U. S. 304; Frischer v. Elting, 60 Fed. (2) 711 (C. C. A. 2); Sears Roebuck v. Fed. Tr. Com., 258 Fed. Rep. 307 (C. C. A. 7). Assuming that the preamble of the whole statute will not serve alone (Panama Refining Co. v. Ryan, 293 U. S. 388), practices generally deemed unfair in any trade may I think be made the basis of a delegated power, which is obliged to conform to the varying needs of many industries. But the extent of the power of Congress to regulate interstate commerce [fol. 1667] is quite another matter and goes to the very root of any federal system at all. It might, or might not, be a good thing if Congress were supreme in all respects, and the states merely political divisions without more autonomy than it chose to accord them; but that is not the skeleton or basic frame-work of our system. To protect that frame-work there must be some tribunal which can authoritatively apportion the powers of government, and traditionally this is the duty of courts. It may indeed follow that the nation cannot as a unit meet any of the great crises of its existence except war, and that it must obtain the concurrence of the separate states; but that to some extent at any rate is implicit in any federation, and the resulting weaknesses have not hitherto been thought to outweigh the dangers of a completely centralized government. If the American people have come to believe otherwise, Congress is not the accredited organ to express their will to change.

In an industrial society bound together by means of transport and communication as rapid and certain as ours, it is idle to seek for any transaction, however apparently isolated, which may not have an effect elsewhere; such a society is an elastic medium which transmits all tremors throughout its territory; the only question is of their size.

In the case at bar such activities as inspecting the fowls after they have arrived, licensing dealers, and requiring reports, are directed at least in part to the control of their importations, and it is not necessary that they should impinge directly upon the importation itself. So much was certainly decided as to this very industry in Local 167 International Brotherhood v. U. S., 291 U. S. 293. The "straight killing" rule is of the same kind; it compels a grading of the fowls at shipment and so determines how [fol. 1668] they shall be cooped and carried. But the regulation of the hours and wages of all local employees who turn the fowls into merchantable poultry after they have become a part of the domestic stock of goods, seems to me so different in degree as to be beyond the line. No one can indeed deny the prosecution's argument that hours and wages will in fact influence the import of the fowls into the state; and there are instances in which purely intrastate activities are so enmeshed with interstate that they must be included in interstate regulation, else none at all is possible. That is the case with railway rates. Houston E. & W. T. R. R. Co. v. U. S., 234 U. S. 342; R. R. Commission of Wisconsin v. Chic. B. & Q. R. R. Co., 257 U. S. 563. Lehmke & Farmers Grain Co., 258 U. S. 50, was of the same kind. There is no such intimate connection here. Again, the hours and wages of railway workmen may be regulated. Wilson v. New, 243 U. S. 332; Baltimore & O. R. R. Co. v. Interstate Commerce Commission, 221 U. S. 612. So too the other conditions of their employment. Texas & N. O. R. R. v. Brotherhood of Railway Clerks, 281 U. S. 548. But this is limited to those actually conducting transportation, where the connection is as close as possible. The employees of these defendants were not engaged in transportation. Finally, there are decisions like Stafford v. Wallace, 258 U. S. 495 and Chicago Board of Trade v. Olsen, 262 U. S. 1, of which all that can be said is that the connection between the intrastate transactions regulated and interstate commerce was found to be close enough to serve. It would be, I think, disingenuous to pretend that the ratio decidendi of such decisions is susceptible of statement in general principles. That no doubt might give a show of necessity to the conclusion, but it would be insincere and illusory, and [fol. 1669] appears formidable only in case the conclusion

is surreptitiously introduced during the reasoning. The truth really is that where the border shall be fixed is a question of degree, dependent upon the consequences in each case.

The only ground here for bringing hours and wages within the scope of Congress's power is because the raw material on which the men work is substantially all imported into the state; they make dressed poultry out of live fowls. If Congress can control the price of their labor, I cannot see why it may not control the rent of the buildings where the fowls are stored, the cost of the feed they eat while here, and of the knives and apparatus by which they are killed and dressed. All these are necessary factors in the product and all have as much and as little effect upon the importation of the fowls to be killed and dressed as the labor, which is indeed little more than half the cost. There comes a time when imported material, like any other goods, loses its interstate character and melts into the domestic stocks of the state which are beyond the powers of Congress. So too there must come a place where the services of those who within the state work it up into a finished product are to be regarded as domestic activities. Industrial Ass. of San Francisco v. U. S., 268 U. S. 64. Generally the two will coalesce. Work upon material become domestic, can scarcely be other than domestic work; in this it differs from inspection and its ancillary accompaniments. For although inspection is immediately concerned with goods that have arrived, they are ordinarily still in transit; and moreover even were they not, the purpose is directly to control the importation of future goods, like the purpose of the conspiracy in Bedford Cut Stone Co. v. Journeymen's Stone Cutters Association, 274 U. S. 37. But labor [fol. 1670] done to work up materials begins only after the transit is completed in law as well as in fact, and it is not directed towards the importation of future materials; it is a part of the general domestic activities of the state and is as immune as they from congressional regulation.

Judge Chase concurs in this opinion.

[fol. 1670½] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. United States of America vs. Schechter et al. Concurring Opinion. L. Hand, C. J.

[fol. 1671] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a stated term of the United States Circuit Court of Appeals in and for the Second Circuit, held at the court-rooms in the Post Office building in the City of New York, on the 4th day of April, one thousand nine hundred and thirty-five.

Present: Hon. Martin T. Manton, Hon. Learned Hand, Hon. Harrie B. Chase, Circuit Judges.

UNITED STATES, Plaintiff-Appellee,

vs.

A. L. A. SCHECHTER POULTRY CORPORATION et al., Defendants-Appellants

Appeal from the District Court of the United States for the Eastern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States for the Eastern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is reversed on counts 46 and 55, and otherwise affirmed.

It is further ordered that a mandate issue to the said District Court in accordance with this decree.

Wm. Parkin, Clerk.

[fol. 1672] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. United States vs. A. L. A. Schechter Poultry Corp. et al. Order for mandate. United States Circuit Court of Appeals, Second Circuit. Filed Apr. 4, 1935. William Parkin, Clerk.

[fol. 1673] UNITED STATES OF AMERICA,
Southern District of New York:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 1672, inclu-

sive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of United States, Plaintiff-Appellee, against A. L. A. Schechter Poultry Corporation et al., Defendants-Appellants, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 4th day of April, in the year of our Lord one thousand nine hundred and thirty-five, and of the Independence of the said United States the one hundred and fifty-ninth.

Wm. Parkin, Clerk. (Seal United States Circuit Court of Appeals, Second Circuit.)

(6196-C)

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1934

No. 854

ORDER ALLOWING CERTIORARI—Filed April 15, 1935

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted, and the case is advanced and assigned for argument on Thursday, May 2, next.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1934

No. 864

ORDER ALLOWING CERTIORARI—Filed April 15, 1935

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted, and the case is advanced and assigned for argument on Thursday, May 2, next.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.